

## **PART 13 BOARD GENERAL CONDITIONS OF PURCHASE**

### **13.1 PURPOSE**

The purpose of the General Conditions of Purchase is to provide a comprehensive, clear, consistent and reasonable set of contractual terms to serve as the base agreement between the University and a Vendor. These General Conditions of Purchase, along with items specified in 13.4 of this Part herein, shall serve as the Contract with the University regardless of the method of Procurement.

### **13.2 DEFINITIONS**

All terms contained in the Board of Trustees Procurement Regulations and used herein shall have the same meanings.

### **13.3 PROCUREMENT PROCESS**

- A. Pricing. All pricing offered or extended to the University is considered to be firm and fixed unless expressly provided for to the contrary in the Purchase Order or Purchase Agreement.
- B. Cost of Preparation. All costs associated with the preparation, development and submission of Bids or proposals and/or protests arising therefrom, in response to Solicitations issued on behalf of the University, shall be the Vendor's sole responsibility. The University will not Reimburse any Vendor for such costs.
- C. Selection
  1. Vendor Bids and proposals shall be evaluated and Purchase Orders or Purchase Agreement issued with reasonable promptness and by written notice to the successful Vendor (only); Bids and proposals are considered to be irrevocable for a period of sixty (60) days following the opening date unless expressly provided for to the contrary in the Solicitation document, and may not be withdrawn during the specified period without the express written permission of the University Purchasing Agent.
  2. The University reserves the right, before making an award, to initiate investigations as to whether or not the materials, equipment, Supplies, Services, qualifications, integrity, capability, capacity, and/or facilities offered by the Vendor meet the requirements set forth in the Solicitation and are ample and sufficient to ensure the proper performance of the Contract in the event of award. Failure to pay Subcontractors on previous Vendor Contracts may be considered (also see 13.5 of this Part herein). If upon such examination it is found that the conditions of the Solicitation are not complied with, and/or that the Supplies or Services proposed to be furnished do not meet the requirements called for in the Solicitation, and/or that the Services, qualifications, integrity, capability, capacity and/or facilities of the Vendor are not satisfactory, then the University may reject Vendor's Bid or Proposal at the University's sole discretion. Nothing in the foregoing shall mean or imply that it is obligatory upon the University to make any examinations before issuance of a Purchase Order or Purchase Agreement. If such examination is made, it in no way relieves the Vendor from fulfilling all requirements and conditions of the Contract.
  3. Qualified or conditional offers which impose limitations of the Vendor's liability or modify the requirements of the Solicitation, offers for alternate Specifications, or offers which are made subject to different terms and conditions, including form Contracts, other than those specified by the University may be, at the sole discretion of the University Purchasing Agent:

- a. Rejected as being non-responsive; or,
  - b. Set aside in favor of the requirements set forth in the Solicitation (with the consent of the Vendor); or,
  - c. Accepted, if the University Purchasing Agent determines in writing that such acceptance is in the best interest of the University.
  - d. Acceptance or rejection of alternates or counteroffers by the University Purchasing Agent shall not constitute a precedent and shall not be binding on successive Solicitations or Procurements.
4. Vendor Bids and proposals must bear an authorized signature or certification in a form approved by the University Purchasing Agent. Vendor Bids and proposals which do not bear the required signature or certification may be deemed to be non-responsive to the Solicitation. Bids submitted in pencil will not be accepted.
  5. Vendor Bids and proposals must utilize the unit of measure specified in the Solicitation. In the event of any discrepancy between unit prices and their extensions, the unit price will govern.
  6. The University Purchasing Agent reserves the right to determine whether a Vendor is a Responsive Proposer to a Solicitation and whether a Vendor is Responsible.
  7. The University Purchasing Agent reserves the right to reject any and all Bids or proposals in whole or in part, to waive technical defects, irregularities, and omissions, to consider a Vendor's past performance where, in the University Purchasing Agent's judgment, the best interest of the University will be served, to require additional Competitive Negotiations and/or to issue a Request for Best and Final Offers.
  8. The University Purchasing Agent reserves the right to make awards by items, group of items or on the total low Bid for all the items specified as indicated in the Solicitation, unless the Vendor expressly indicates otherwise in its Bid or proposal that doing so is not acceptable.
  9. Preferences may be given as authorized by law or regulation, including, but not limited to, the following:
    - a. Preference may be given to Bids for products raised or manufactured in Rhode Island, if all other things are equal. Contracts funded entirely by State funds, when all factors are equal, a Vendor or Services provider whose headquarters or primary place of business is located within the State, or in the event of a joint venture with a Vendor or Services provider whose headquarters or primary place of business is within the State, shall receive preference.
    - b. **MINORITY BUSINESS ENTERPRISES** - Pursuant to the provisions of RIGL Chapter 37-14.1 the University reserves the right to apply additional consideration to offers, and to direct awards to Proposers other than the Responsive Proposer with the Bid representing the lowest price where:
      - i. The offer is fully responsive to the terms and conditions of the Request;
      - ii. The price offer is determined to be within a competitive range (not to exceed 5% higher than the lowest responsive price offer) for the product or service;
      - iii. The firm making the offer has been certified by the State Office of Diversity Equity and Opportunity ("OPDES") to be a small business

concern meeting the criteria established to be considered an MBE or WBE;

- iv. A minimum of ten percent (10%) of the dollar value of the work performed against Contracts may be performed by certified MBEs or WBEs where it has been determined that subcontract and/or supply opportunities exist, and where certified MBEs or WBEs are available. Awards of this type shall be subject to approval by the State Director of Administration of a Subcontracting Plan submitted by the Proposer receiving the award.
- v. In the event federal funding requirements impose additional or different requirements relating to contracting with MBEs, WBEs or other underrepresented businesses, those federal requirements must be followed.

10. The University Purchasing Agent reserves the right to act in the University's best interest regarding awards caused by clerical errors or omissions by the University Purchasing Department.

11. Any Contract issued by the University Purchasing Department is subject to the resolution of any timely Protest.

12. Any objections to Specifications or requirements in a Solicitation must be received by the University Chief Purchasing Officer in accordance with University Procurement Regulation, Section 1.5 ("Resolution of Protests").

D. Public Records. Vendors are advised that all records submitted to the University Purchasing Department may be subject to disclosure in accordance with APRA and/or in the course of litigation through discovery. Any records submitted which a Vendor believes are of a privileged or confidential nature or are not subject to disclosure in accordance with RIGL § 38-2-2 or other applicable laws, should be clearly marked. The Vendor should provide a brief explanation as to why each portion of information marked as confidential or privileged should be withheld from public disclosure and cite the specific provision of RIGL § 38-2-2. In the event the Vendor makes a reasonable assertion of confidentiality or privilege, the University Purchasing Department will use reasonable efforts to honor the Vendor's request.

E. Product Evaluation

- 1. All Standards are minimum Standards except as otherwise provided for in the Solicitation.
- 2. Samples must be submitted to the University Purchasing Department in accordance with the Solicitation. Samples must be furnished free of charge with the understanding that they shall not be returned to the Vendor.
- 3. All samples submitted by Vendors may be subject to examination or testing by any laboratory the University Purchasing Agent may designate.

F. COLLUSION - Vendor warrants that it has not, directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action in restraint of full competitive bidding.

G. PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES - Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any Employee or official of the University for the purpose of obtaining any Contract or award issued by the University. Vendor further warrants that no commission or other payment has been or will be received from or paid to any third-party contingent on the award of

any Contract by the University, except as shall have been expressly communicated to the University Purchasing Agent in writing prior to acceptance of the Contract or award in question. Subsequent discovery by the University of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding Contracts and suspension or Debarment of the Proposer(s) or Vendor(s) involved.

#### **13.4 ENTIRE AGREEMENT**

- A. Incorporation. The Purchase Order, Purchase Agreement or Letter of Authorization issued by the University Purchasing Department, together with associated documents referenced therein, shall constitute the entire and exclusive agreement between the University and any Vendor receiving an award. As noted in § 13.1 of this Part, the resulting Contract shall incorporate by reference:
1. Applicable provisions of the Act;
  2. These regulations;
  3. The URI Proposer/Vendor Certification Form;
  4. All other applicable provisions of the Rhode Island General Laws and applicable federal laws;
  5. The specific requirements described in the Solicitation and related Solicitation documents;
  6. These General Conditions of Purchase, along with applicable General Condition Addenda as defined in Section 13.34 herein; and
  7. The offer/proposal submitted by Vendor and accepted by the University.
- B. Order of Precedence. Unless otherwise approved by the University Purchasing Agent, in the event of any express conflict or dispute regarding a Vendor's proposal, a Vendor's proposed standard terms of sale, the Solicitation documents, statutes, regulations and/or these General Conditions of Purchase, the following order of precedence shall generally apply (with 1 being the highest level of precedence):
1. Federal laws and/or regulations (for federally funded Contracts only)
  2. Rhode Island General Laws;
  3. The University of Rhode Island Board of Trustees Procurement Regulations, General Conditions of Purchase and General Condition Addenda;
  4. The Purchase Order or Purchase Agreement issued by the University Purchasing Department;
  5. The offer, proposal or Bid submitted by the Vendor and to the extent accepted by the University Purchasing Department;
  6. Solicitation documents issued by the University Purchasing Department; and
  7. To the extent allowed by law, for an individual Procurement, the University Purchasing Agent may agree to an alternate order of precedence to serve the best interest of the University and/or to protect the health, safety and welfare of the University and its community.
- C. Contract Contingencies
1. All Contracts are subject to the following:
    - a. All material communication between the University and any Vendor pertaining to any Solicitation, award or management of a Contract shall be set forth in writing.
    - b. Vendor proposals shall be accepted by the University Purchasing Department with the understanding that the issuance of a Purchase Order,

Purchase Agreement or Letter of Authorization shall be the only document which creates a binding Contract between the Vendor and the University. The Purchase Order, Purchase Agreement or Letter of Authorization shall bind the Vendor on its part to furnish and deliver Supplies and/or Services at the prices and in accordance with the conditions of Vendor's proposal. A Contract shall be deemed executory only to the extent of funds available for payment of the amounts shown on the Purchase Order. Additionally, any Contract shall be contingent upon the resolution of a timely Protest.

- c. No alterations or variations of the terms of the Contract shall be valid or binding upon the University, or its Board unless submitted in writing and accepted by the University Purchasing Agent through issuance of an approved Purchase Order or Change Order. All Contracts and changes must be approved by and emanate from the University Purchasing Department.
- d. Oral agreements or arrangements made by a Vendor with anyone, including a University Employee, shall not be binding upon an agency, the University or its Board unless and until reduced to writing and approved by the University Purchasing Agent through the issuance of an approved Purchase Order, Purchase Agreement or Change Order.
- e. Contracts shall remain in force for the term specified in the Purchase Order or Purchase Agreement or until all articles or Services ordered before date of termination shall have been satisfactorily delivered or fully rendered and accepted by the University and thereafter until all terms and conditions have been met, unless:
  - i. Terminated prior to expiration date by satisfactory delivery against orders of entire quantities, or
  - ii. Extended upon written authorization of the University Purchasing Agent to permit ordering of the unordered balances or additional quantities at the Contract price and in accordance with the Contract terms, or
  - iii. Canceled by the University in accordance with other provisions stated herein.
- f. All Vendor obligations as described herein shall survive expiration, termination and/or cancellation of the Contract.

### **13.5 RELATIONSHIP OF PARTIES**

The selected Vendor must be fully qualified and capable in all material respects to provide the specified Supplies and/or Services. Unless specifically provided for in the Solicitation, the Vendor shall be an Independent Contractor and not an Employee, agent, partner or joint venturer with the University. Nothing herein shall be construed as creating any contractual relationship or obligation between the University and any sub-Proposer, Subcontractor, supplier of the Vendor, and/or employee of the Vendor. With that said, the University may consider Vendor non-payment of Subcontractors or suppliers in determining whether an award to the Vendor is in the best interest of the University. If the Solicitation allows, and the Vendor is a joint entity consisting of more than one individual, partnership or corporation or other business organization, all such entities shall be jointly and severally liable for performing the Contract; however, one entity shall be designated as the lead Vendor for contracting purposes.

### **13.6 SPECIFIED QUANTITY REQUIREMENTS**

- A. Except where expressly specified to the contrary, all Solicitations are predicated on a specified quantity of Supplies or Services, or for a specified level of funding. Provided, however, that:
1. If stated in the Solicitation, the University reserves the right to modify the quantity, scope of service, or funding of any Contract, with no penalty or charge, by written notice to the Vendor; and,
  2. The University shall not accept quantities in excess of the specified quantity except where the item is normally sold by weight (where sold by weight, the University shall not accept quantities greater than ten per cent [10%] of the specified quantity), or where the Solicitation provides for other than exact quantities; and,
  3. Quantities and performance periods set forth in a Purchase Order or a Purchase Agreement may be increased or extended with approval of the University Purchasing Agent provided; however, that any such increase or extension shall be documented through issuance of a Change Order issued by the University Purchasing Department.

### **13.7 TERM AND RENEWAL**

The term (i.e., duration) of the Contract shall be specified in the Contract and may not exceed any limits imposed by applicable law. While automatic renewal provisions are generally disfavored, no Contract shall in any case be automatically renewed for periods in excess of any Contract duration limitations imposed by applicable law.

In the case of multi-year Contracts, in accordance with the limitations relating to “multi-year Contracts” imposed by RIGL §37-2-33, the University’s payment and performance obligations, after the first year of such Contract, shall be subject to the availability of funds therefor, provided however, that it must do so in “good faith” as that term is defined in RIGL §37-2-3(b), and it is the University’s policy that it shall not cancel or terminate a Contract due to the unavailability of funds hereunder unless the unavailability of funds is due to causes outside of the University’s control, and not due to the failure or refusal of the University to allocate sufficient funds within its discretion.

### **13.8 DELIVERY**

- A. Delivery must be made as ordered and in accordance with the Solicitation and Vendor’s proposal. If delivery qualifications do not appear on the Vendor’s proposal, then the proposal shall be interpreted to mean that Supplies are in stock and that shipment will be made within seven (7) calendar days after issuance of the Purchase Order. The decision of the University Purchasing Agent as to reasonable compliance with the delivery terms shall be final. The burden of proof for delay in delivery of an order shall rest with the Vendor. Except when authorized on the Purchase Order:
1. All prices shall be quoted F.O.B. destination, freight pre-paid with all transportation and handling charges paid by the Vendor;
  2. Responsibility and liability for loss or damage shall remain with the Vendor until final inspection and acceptance when responsibility shall pass to the University except as to latent defects, fraud and or Vendor’s warranty obligations;
  3. Deliveries shall be inside deliveries to other than a loading dock, front lobby or reception area and as designated in the Purchase Order; and,

4. Costs shall include all packaging and/or crating charges which shall be of durable Construction, good condition, properly labeled and suitable for handling of contents.

### **13.9 FOREIGN ENTITIES**

In accordance with RIGL § 7-1.2-1401, no business entity shall have the right to transact business in Rhode Island until it shall have procured a certificate of authority to transact business in the State from the Rhode Island Secretary of State. The term "Entity" means a corporation, a business trust, or association, a real estate investment trust, a common-law trust, a sole proprietorship or any other unincorporated business, or entity including a partnership, whether general or limited, (including a registered limited liability partnership), a foreign limited liability company, or as defined in RIGL § 7-1.2-1401.

### **13.10 PRODUCT ACCEPTANCE**

- A. Quality. All Supplies offered or otherwise provided by Vendors shall be new, of the latest model or design, sourced from regular stock product inventories with all parts regularly used with the type of Supplies offered, without attachment(s) or part(s) substituted or applied contrary to manufacturer's recommendation and standard practice, of prime manufacture, and of first quality unless otherwise specified by the University.
- B. Rejection of Nonconforming Goods. The University reserves the right to reject all nonconforming Supplies, and to cause their return for credit or replacement, at the University's option. Contract deliverables specified for Procurement of Services shall be construed to be work product, and subject to the provisions of this Section.
  1. Failure by the University to discover latent defect(s) or concealed damage or non-conformance shall not foreclose the University's right to subsequently reject the Supplies in question.
  2. Formal or informal acceptance by the University of non-conforming Supplies shall not constitute a precedent for successive ordering, receipt, acceptance, or Procurement of non-conforming Supplies.
- C. If the Vendor fails to Promptly cure the defect or replace the Supplies, the University reserves the right to cancel the Purchase Order. The University may then Contract with a different Vendor and invoice the original Vendor for any differential in price over the original Contract price.
- D. When materials, equipment or Supplies are rejected, the same must be removed by the Vendor from University property within forty-eight (48) hours of notification, unless otherwise specified by the University. Rejected items left longer than forty-eight (48) hours or another time set by the University, shall be regarded as abandoned and the University shall have the right to dispose of those items at the Vendor's expense.

### **13.11 OWNERSHIP**

Unless otherwise specifically provided for in the Solicitation, General Conditions of Purchase, or General Condition Addenda, all Data, material and documentation prepared for the University shall be considered work for hire and belong exclusively to the University.

### **13.12 PRODUCT WARRANTIES**

- A. All product or service warranties normally offered by the Vendor shall accrue to the University's benefit, in addition to any special requirements or Benefits which may be stated in the Solicitation and/or additionally offered by the Vendor in its Bid or proposal.

During the term of any maintenance period, but for no less than one year from acceptance, the Vendor shall warrant:

1. The product or Services shall perform according to the specific claims and representations made by the Vendor in its Bid or proposal;
  2. The Services or product offered by the Vendor are suitable for the ordinary purposes for which such product is used or Services provided;
  3. The product or Services offered by the Vendor are suitable for any special purposes identified in the Solicitation or for which the University has relied on the Vendor's skill or judgment;
  4. The product was designed and the Services performed in a commercially reasonable manner; and,
  5. The product or Services are free from defects in material and workmanship.
- B. The University shall give notice of a warranty claim to the Vendor in a commercially reasonable manner, upon which, the Vendor shall repair or replace at no cost to the University the product or Services. If the repaired or replaced product or Services prove to be inadequate, or fail of their essential purpose, the Vendor shall refund the full amount of any payments that have been made by the University. The rights and remedies of the University under this Section are in addition to any other rights and remedies (including cover) provided by law or equity. Any alternate warranties proposed by a Vendor are subject to the provisions of 12.3(C)(3) of this Part.

### **13.13 PAYMENT**

- A. Unless otherwise provided for in the Solicitation, Purchase Order or Agreement, payment (subject to retention or set-off, if applicable) shall not be made by the University until Supplies and are delivered or Services performed, in full, and accepted. After such acceptance, payment shall not be due until a properly submitted invoice, with satisfactory documentation, is delivered to the University. Payment then shall be made Promptly in accordance with RIGL § 42-11.1-1, *et seq.*:
1. Vendor payment terms other than as set forth herein may be rejected as being non-responsive.
  2. No partial shipments will be accepted, unless provided for by the Solicitation or Purchase Order.
  3. Where a question of quality or performance is involved, payment in whole or part against which to charge back any adjustment required, shall be withheld at the direction of the University Purchasing Agent.
  4. In the event a cash discount or rebate is stipulated, the withholding of payments, as herein described, will not deprive the University from taking such discount or rebate.
  5. If not rejected, payments for used portion of inferior or defective Supplies shall be made by the University on an adjusted price basis.
  6. Requests for payments on Contracts under architectural or engineering supervision must be authorized by the Architect or Engineer and submitted to the University for approval.

### **13.14 SET-OFF AGAINST PAYMENTS**

Payments due the Vendor shall be subject to reduction by the University Controller equal to the amount of unpaid and delinquent State taxes (or other just debt owed to the State), except where



notice of deficiency for trust fund taxes is not a final assessment and still open for a hearing request or while the tax deficiency notice is pending in administrative hearing or from any judicial appeal therefrom.

### **13.15 CLAIMS**

#### **A. Setoff**

Any claim against a Vendor may be deducted by the University from any money due it in the same or other transactions. If no deduction is made in such fashion, the Vendor shall pay the University the amount of such claim on demand. Submission of a voucher and payment, thereof, by the University shall not preclude the University Purchasing Agent from demanding a price adjustment in any case when Supplies or Services are delivered or are later found to deviate from the Contract.

#### **B. Damages for Claims**

The University Purchasing Agent may assess dollar damages against a Vendor determined to be non-performing or otherwise in default of its contractual obligations equal to the cost of remedy incurred by the University and make payment of such damages a condition for consideration for any subsequent award. Failure by the Vendor to pay such damages shall constitute just cause for disqualification, rejection, and/or suspension. Vendor may appeal any assessment of damages in accordance with Section 1.5 of these regulations (“Resolution of Protests”).

### **13.16 UNUSED BALANCES**

Unless otherwise specified, all unused quantities and/or unexpended funds shall be automatically canceled on the expiration of the specified term stated in the Contract. Similarly, for orders encompassing more than one State Fiscal Year, unexpended balances of funding allotted for an individual fiscal year may be liquidated at the close of that fiscal year, at the University's sole option.

### **13.17 CONFIDENTIALITY**

#### **A. “Confidential Information”**

1. Whenever used in a Contract, the term “Confidential information” means:
  - a. Information exempt from disclosure to the public or other unauthorized persons under either Rhode Island or federal statutes or regulations; or
  - b. Information related to the University’s infrastructure, operations, security, or personnel unless otherwise identified by the University in writing as non-confidential at the time of disclosure; or
  - c. Any other information which the University has identified to the Vendor in writing as confidential at the time of disclosure or within thirty (30) days after disclosure; or
  - d. University Data which includes Vendor Data and the University’s Data used, processed, hosted, stored, or generated as a result of the Services. User Data means any and all information reflecting the access or use of the Services by or on behalf of the University or any authorized user, including any end user profile, visit, session, impression, information, click-through or click stream Data and any statistical or other analysis, information or Data based on or derived from any of the foregoing; or
  - e. Information that would ordinarily be reasonably considered confidential or proprietary in the light of the circumstances surrounding disclosure.

B. Form of Confidential Information

1. Confidential Information may take the form of, but is not limited to, plans, calculations, charts, concepts, know-how, inventions, licensed technology, design sheets, design Data, diagrams, system design, materials, hardware, manuals, drawings, processes, schematics, Specifications, instructions, explanations, research, test procedures and results, equipment, identity and descriptions of components or materials used, any and all personal and/or confidential information pertaining to University Employees and/or University personnel, including, but not necessarily limited to, any and all personal and/or confidential healthcare and/or health and/or medical Data and/or any other similar and/or related personal and /or confidential information, pertaining to University Employees and/or University personnel or any other material or information supplied by or on behalf of the University, University Data or that is disclosed to or becomes known by Vendor as a result of its dealings with the University. Confidential Information may be in tangible or intangible form. The University's failure to expressly identify Confidential Information as such shall not in any way lessen or negate Vendor's obligation to keep such information confidential in accordance with these terms.

2. Exemptions to Confidential Information

- a. Notwithstanding the foregoing, and except as provided in the Contract or any Contract Addendum, the term Confidential information shall not be construed to include information that:
  - i. Is or becomes readily available in public records or documents, other than as a result of an inappropriate disclosure by Vendor or other entity or persons acting on behalf of Vendor, or
  - ii. Can be documented to have been known by Vendor prior to its release to the Vendor by the University without an obligation of confidentiality, or
  - iii. Is disclosed pursuant to applicable Rhode Island law and/or federal law, judicial action or government regulations.

C. Vendor Acknowledgement. Vendor acknowledges that the Confidential Information is confidential and Proprietary Information and that its protection is essential to the security and mission of the University. It is understood that the Vendor is not granted an express or implied license or an option on a license, or any other rights to or interests in the Confidential Information other than any licensing provisions as defined in a Contract and/or agreement between the University and Vendor.

D. Vendor acknowledges and shall require Vendor's Agents to:

1. Copy, reproduce or use Confidential Information only for the purpose described in the Contract and not for any other purpose unless specifically authorized to do so in writing by the University; and
2. Not permit any other person or entity to use or disclose the Confidential Information for any purpose other than those expressly authorized by the Contract; and
3. Disclose such Confidential Information only to those of Vendor's Agents who require knowledge of the same for the purpose described in the Contract; provided such Vendor's Agents are obligated to maintain the confidentiality of

the Confidential Information and otherwise comply with the terms of the Contract; and

4. Implement physical, electronic and managerial safeguards to prevent unauthorized access to or use of Confidential Information, including without limitation, providing Vendor's Agents with a copy of the terms of the Contract and any other Non-Disclosure Agreement the University may provide for said Vendor's Agents signature. Such restrictions will be at least as stringent as those applied by the Vendor's own most valuable confidential and proprietary information and as required by the Contract.
5. The acts or omissions of Vendor's Agents with respect to the Confidential Information shall be deemed to be acts or omissions of the Vendor.

E. Additional Requirements

1. Vendor will not remove, obscure or alter any confidentiality or Trade Secret notation from the Confidential Information without the University's prior written authorization.
2. Confidential Information will remain the exclusive property of the University unless as otherwise provided for in any agreement and/or the Contract between the University and Vendor; upon completion of the project and/or Services, or whenever requested by the University, Vendor will Promptly destroy or return to the University, in a form acceptable to the University, any and all Confidential Information and all copies thereof, including summaries, reports or notes based thereon, unless otherwise expressly authorized otherwise by the University in writing.
3. Vendor agrees that the breach of these terms would cause irreparable damage to the University. Therefore, Vendor agrees that should it breach its obligations hereunder, Vendor shall defend, indemnify, release, and hold the University harmless from actual damages from losses that result from its breach, including, but not limited to, reasonable attorneys' fees and related litigation expenses. Also, the University has the right to seek an order to restrain the Vendor and Vendor's Agents, etc. from breaching these terms or otherwise commence any action in law or in equity.

### 13.18 TAXES

- A. The University is exempt from payment of any tax imposed directly on the purchaser of Supplies and Services under federal, state or local law with the sole exception of the Rhode Island Motor Fuel Tax, RIGL § 31-36-1, *et seq.* Except for the Rhode Island Motor Fuel Tax, federal, state and local taxes should not be included in the Vendor's Bid or proposal price or otherwise invoiced. Exemption Certificates will be furnished upon request. Vendors and their Subcontractors performing improvements to real property pursuant to a Contract with the University may purchase materials specifically allocated for the performance of said Contract from their Vendors provided that:
  1. The materials are essential to the project;
  2. The materials are incorporated into the project; and,
  3. The Vendor or its Subcontractors provide their suppliers with an exemption certificate.

### **13.19 INSURANCE/BONDS/OTHER SECURITY**

- A. Insurance. Prior to issuance of a Contract, Vendor shall submit to the University Purchasing Department proof of insurance coverages as set forth in the General Condition Addendum A (General Insurance Requirements), other applicable General Condition Addenda and/or as required by the Solicitation (“Insurance Requirements”). Vendor shall comply with the minimum insurance requirements imposed by the University. If different or additional insurance requirements are set forth in the Solicitation, then Vendor shall comply with the insurance requirements specified in the Solicitation
- B. Payment and Performance Bonds. When required by the Solicitation or the General Condition Addenda, the successful Vendor shall furnish a payment and/or Performance Bond in the amount stated in the Solicitation from a surety licensed to conduct business in the State of Rhode Island upon the tentative selection.
- C. Other Security. The University Purchasing Agent reserves the right to consider and accept alternate forms and plans of insurance or other comparable forms of security, and/or to require additional or more extensive coverage for any individual Procurement. Vendors shall provide certificates of insurance and required endorsements for all insurance requirements of the Solicitation in form and terms acceptable to the University Purchasing Agent. Failure to comply shall result in a determination that the Vendor is not “responsible.” The University Purchasing Agent may change the insurance requirements contained in General Condition Addenda as necessary to protect the University’s interests.

### **13.20 TERMINATION, DEFAULT, CANCELLATION AND STOP WORK**

- A. Non-Performance or Breach. A Contract may be rescinded, canceled or terminated by the University Purchasing Agent, at the Vendor’s expense upon non-performance or breach by the Vendor of any of its obligations. Failure of a Vendor to cure such non-performance or breach within ten (10) business days after the receipt of notice, unless otherwise determined by the University Purchasing Agent, shall be sufficient cause for the cancellation, rescission or termination of a Contract, the cancellation of all existing University Contracts and or subcontracts to which the Vendor is a party, and/or the suspension or Debarment of the Vendor from participating in future Procurements. The University may pursue any and all of its rights and remedies at law or in equity against the defaulting Vendor or its surety.
- B. Timeliness. Failure of a Vendor to deliver the required Supplies or perform Services within the time specified and in accordance with the applicable standards of professional skill and care, or within reasonable time as interpreted by the University Purchasing Agent, or failure of a Vendor to make replacement of rejected articles, when so requested, immediately or as directed by the University Purchasing Agent, may cause the University Purchasing Agent to purchase in the open market to replace those Supplies or Services rejected or not delivered. The University Purchasing Agent reserves the right to authorize immediate purchase in the open market against rejections on any Contract when necessary. On all such purchases, the Vendor, and/or its surety, agrees to Promptly Reimburse the University for excess costs occasioned by the Vendor’s default. Should the replacement cost be less, the Vendor shall have no

claim for the difference. Vendor who fails to commence within the time specified or complete an award made for repairs, alterations, Construction, or any other Services may be considered to be in default of Contract. The University Purchasing Agent may Contract for completion of the work with another Vendor and seek Reimbursement of all costs and expenses from the defaulting Vendor and/or its surety and pursue all rights and remedies at law or in equity.

- C. Availability of Funds. In the case of multi-year Contracts only, in accordance with the limitations relating to “multi-year contracts” imposed by RIGL §37-2-33, the University’s payment and performance obligations, after the first year of such Contract, shall be subject to the availability of funds therefor, provided however, that it must do so in “good faith” as that term is defined in RIGL § 37-2-3(b), and it is the University’s policy that it shall not cancel or terminate a Contract due to the unavailability of funds hereunder unless unavailability of funds is due to causes outside of the University’s control, and not due to the failure or refusal of the University to allocate sufficient funds within its discretion.

In the case of Contracts funded with federal monies, the University’s performance and payment shall be subject to and contingent upon the continuing availability of said federal funds.

If funds to effect payment of the above-described Contracts are not available, the University will provide written notification to Vendor. If the Contract is terminated under this paragraph, Vendor agrees to take back any affected Supplies not yet delivered, terminate any Services supplied to the University, and relieve the University of any further obligation thereof. University shall remit payment for Supplies and Services accepted prior to the date of termination in the notice.

- D. Convenience. Neither the University nor the Vendor may terminate or cancel a Contract “for convenience” or “without cause” unless the University and the Vendor have specifically agreed in writing, and included in the Contract, a provision giving either or both parties such a right.
- E. Stop Work. In the interests of health, safety and welfare, economic or otherwise, the University Purchasing Agent may issue a stop work order to a Vendor on any Contract for a reasonable period of time. The Vendor shall cease and desist any further work until so ordered by the University Purchasing Agent. In the event that the Vendor bears responsibility for the conditions requiring a stop work order, the University shall not be responsible for any delays.

### **13.21 INDEMNIFICATION**

- A. General. Vendor shall defend, indemnify, release and hold harmless the University and its agencies, together with their respective officers, agents and Employees, from and against any and all third-party claims, demands, liabilities, causes of action, losses, damages, judgments and other costs and expenses (including attorneys’ fees) arising out of, or related to, directly or indirectly, in whole or in part, Vendor’s breach of the Contract or the act(s), error(s) or omission(s) of the Vendor or its employees, agents, Subcontractors or volunteers at any tier.

- B. Intellectual Property. Vendor shall defend, indemnify, release and hold harmless the University and its agencies, together with their respective officers, agents and Employees, from and against all claims, demands, damages, liabilities, death, injury, judgments and other costs and expenses (including attorneys' fees), arising out of or related to, directly or indirectly, in whole or in part, a claim that a product or Services or its use infringes the intellectual property rights of another person or entity.

### **13.22 VENDOR OBLIGATIONS**

- A. In addition to the specific requirements imposed by the University in the Contract, a Vendor engaged in providing Supplies or Services to the University shall generally have the following standard responsibilities:
1. Perform Services in accordance with applicable standards of professional skill and care or as otherwise provided in the Solicitation or Contract. When applicable law requires that Services be performed by licensed professionals, Vendor shall provide those Services through the performance of qualified persons or entities duly licensed to practice their professions.
  2. To furnish adequate protection from damage for all work and to repair damage of any kind, for which it or its workmen are responsible, to the building or equipment, to its own work, or to the work of other Vendors.
  3. To clear and remove all debris and rubbish resulting from its work from time to time, as directed or required, at completion of the work to leave the premises in a neat, unobstructed condition, broom clean, and in satisfactory order and repair.
  4. To store equipment, Supplies, and material at the project site only upon approval by the University, and at its own risk.
  5. To perform all work so as to cause the least disruption and inconvenience to the University, and with proper consideration for the rights of other Vendors and workers.
  6. To acquaint themselves with conditions to be found at the project site, and to assume responsibility for the appropriate dispatching of equipment and supervision of its employees during the conduct of the work.
  7. To supervise Vendor employees and Subcontractors and to ensure that its employees are instructed with respect to special rules, regulations, policies, and procedures in effect for any University facility or project site, and that its employees comply with such rules, regulations, policies and procedures.
  8. To perform background checks of Vendor employees, Subcontractors and agents as required by the University.
  9. EQUAL OPPORTUNITY COMPLIANCE, HANDICAPPED ACCESS AND AFFIRMATIVE ACTION - Vendors of the University are required to demonstrate the same commitment to equal opportunity as prevails under federal Contracts controlled by Federal Executive Orders 11246, 11625, 11375 and 11830, and RIGL Chapter 28-5.1. Affirmative action plans shall be submitted by the Vendor for review by the State Equal Opportunity Office. A Vendor's failure to abide by the rules, regulations, Contract terms and compliance reporting provisions as established shall be grounds for forfeiture and penalties as shall be established, including but not limited to suspension.

10. DRUG-FREE WORKPLACE REQUIREMENT – Vendors who do business with the University and its Employees shall abide by the University's drug-free workplace policy. Specifically, Vendor agrees as follows:
- a. Vendor employees and agents are required to refrain from the abuse of alcohol and/or illegal and/or prescription drugs and must report to work in a fit condition to perform their duties or be subject to disciplinary action by the Vendor.
  - b. All Vendor employees, while on University business, on or off the workplace, are prohibited from purchasing, transferring, using, or possessing illegal drugs or from abusing alcohol or prescription drugs in any way that is illegal.
  - c. Vendors will take appropriate disciplinary action with all violators of this policy who are currently employed. Vendors will not knowingly consider for employment anyone who is known to currently abuse alcohol and/or illegal and/or prescription drugs.
11. In the best interest of the University, the University Purchasing Agent reserves the right to remove or have a Vendor immediately remove any Vendor employee, Subcontractor or agent of the Vendor working on a University Contract based on a good faith belief that the individual is not acting in an appropriate, professional and/or in a commercially reasonable manner.
12. To comply with the provisions of RIGL § 37-2-34 (Right to inspect facilities – Right to Audit) as necessary.

### **13.23 FORCE MAJEURE**

Neither the University, nor its Vendors, shall be liable to the other for failure or delay in performance due to a cause not reasonably foreseen by, beyond the control of, and without the fault or negligence of the party declaring a force majeure event; provided that the party declaring a force majeure event shall have used its best efforts to avoid such failure or delay in performance, minimized the impact thereof, and given Prompt written notice to the other party when first discovered, fully describing its probable effect and duration. In such event of excusable delay or non-performance, the University shall have the right at its option and without liability to cancel by notice to the Vendor any and all portions of Vendor's performance so affected and to take such other action as may be necessary.

The University may, after ascertaining the facts and the extent of the delay, extend the time for completing performance when the facts so justify and amend the timetable accordingly. The University shall not be liable for any increased costs, including price escalation, beyond the performance or delivery date, due to a force majeure event. Force majeure shall not include a Vendor's financial distress or the financial distress of Vendor's parent, subsidiary, affiliated or associated company; claims or court orders that restrict Vendor's ability to deliver the Supplies, products or Services contemplated by the Contract; strikes; labor unrest; supply chain disruptions; Vendor's Subcontractor's or supplier's financial distress, conduct, negligence or default; or, as otherwise set forth within the Contract and associated documents.

### **13.24 COMPLIANCE WITH LAW**

During the term of the Contract with the University, Vendors shall comply with all statutes, laws, regulations, codes, orders, policies, rules and regulations of federal, state or municipal authorities applicable to the furnishing of such Supplies or Services as set forth in the Solicitation and the

Vendor's Bid or proposal all of which are hereby incorporated by reference into any Purchase Order or Purchase Agreement issued by the University Purchasing Department. Vendors shall pay for all required permits, licenses and fees required for the delivery of Supplies or Services to the University unless otherwise stated in the Solicitation or Contract.

**13.25 SUBCONTRACTING, ASSIGNMENT, MERGER OR ACQUISITION, KEY PERSONNEL, THIRD-PARTY PAYMENT, AND PROMPT PAYMENT OF SUBCONTRACTORS**

- A. Subcontracting. Vendors shall not subcontract with any third party, except as set forth in its Bid or proposal, without the prior written consent of the University Purchasing Agent. Such consent, if granted, shall not relieve the Vendor of any of its responsibilities under the Contract, nor shall it create privity of contract between the University and the Subcontractor. If a Vendor uses a Subcontractor to fulfill its responsibilities, then the Vendor shall be responsible for the Subcontractor's performance, compliance with the applicable terms of the Contract and all applicable statutes, rules, regulations, and these General Conditions of Purchase. Upon request, Vendors must submit to the University Purchasing Department of Purchases a list of all Subcontractors to be employed in the performance of any Purchase Order or other Contract arising from this Request.
- B. Assignment. Vendors shall not, in whole or part, assign, transfer, convey, sublet, delegate or otherwise dispose of a Purchase Order, Purchase Agreement or Contract with the University or its right, title or interest therein, or its power to execute such Contract prior to issuance of a Purchase Order, to any other person, company, corporation, or entity without the written consent of the University Purchasing Agent. If consent is not granted, then the assignment, transfer, conveyance, sublet, delegation, or disposal shall be void ab initio.
- C. Merger or Acquisition. If subsequent to the submission of a Bid or proposal and prior to issuance of a Purchase Order or Purchase Agreement, a Vendor merges with or is acquired by another entity, then the Vendor shall provide appropriate and legally binding documentation between the Vendor and the successor entity ratifying acceptance of the Vendor's Bid, proposal and any Contract terms, conditions, and pricing submitted to the University Purchasing Department. The University Purchasing Agent may disqualify the Vendor if the successor entity is determined to be not responsible.
- D. If, after issuance of a Purchase Order, there is a material acquisition or change of ownership of a Vendor or its parent to another entity or person, the University Purchasing Agent may either authorize assignment of the Purchase Order or Purchase Agreement to the successor entity or cancel the Purchase Order or Purchase Agreement.
- E. Key Personnel. If the Vendor's Bid or proposal identified key personnel who would be responsible for fulfillment of the Vendor's performance obligations and said key personnel are for any reason no longer available, then the University Purchasing Agent may either authorize substitution of said key personnel by the Vendor or cancel the Contract.
- F. Third-Party Payment. Unless expressly provided for in the Solicitation, the University will not accede to any request for third party or joint payment(s), except as provided for in specific orders by a court of competent jurisdiction, or by express written permission of



the University Purchasing Agent. If a Vendor's Bid or proposal is contingent upon such payment(s), then it must be clearly stated within the Bid or proposal and is subject to approval by the University Purchasing Agent.

- G. Prompt Payment of Subcontractors. In accordance with RIGL § 42-11.1-3(b) Vendors shall make Prompt payment for satisfactory subcontract work for which the University has made partial or full payment. The University reserves the right to determine whether a Vendor, who repeatedly fails to make Prompt payment to Subcontractors, is Responsible relative to future Procurements, and may Suspend, Debar or otherwise remove such Vendors from the University Proposers List.

### **13.26 ADVERTISING**

Vendors shall not reference a University Contract for the purposes of advertising or promotion without written authorization from the University Chief Purchasing Officer or designated University official.

### **13.27 NON-EXCLUSIVE RIGHTS**

The University reserves the right to issue multiple Solicitations for Supplies or Services similar or identical to Supplies or Services described in a Solicitation for which a Purchase Order or Purchase Agreement has been issued to a Vendor.

### **13.28 ELECTION OF REMEDIES**

All rights exercisable by and remedies of the University shall be cumulative. The exercise or beginning of the exercise by the University of any of its rights and remedies will not preclude the University from exercising any other right hereunder or otherwise granted by law or in equity.

### **13.29 SURVIVAL**

All Vendor obligations herein shall survive expiration, termination and/or cancellation of the Contract.

### **13.30 CONTRACT TRANSITION**

Vendor agrees to act in Good Faith and a commercially reasonable manner at all times in the transition of a Contract to a new Vendor.

### **13.31 GOVERNING LAW, FORUM**

- A. The construction and effect of any Solicitation, Contract or Purchase Order documents, Purchase Agreement or actions by the University through its Purchasing Department, shall be governed and construed in accordance with the laws of the State of Rhode Island, without reference to its principles of conflict of laws, except where the federal supremacy clause requires otherwise.
- B. After exhaustion of any administrative remedies, any suit, action or proceeding brought by a Vendor in connection with any Solicitation, Contract, or Purchase Order or actions by the University, by and through its University Purchasing Department, shall be brought solely in the Rhode Island Superior Court pursuant to RIGL § 37-2-49. Vendors irrevocably submit to the jurisdiction of said court and all courts of appeal from which an appeal may be taken from such court, waive any objection to the venue of said court and any claim that such suit, action or proceeding has been brought in an inconvenient forum. Nothing contained in this section shall be construed to waive any State immunity to suit or liability.

### **13.32 EFFECTIVE DATE AND COMMENCEMENT OF WORK**

- A. Effective Date of the General Conditions of Purchase. The General Conditions of Purchase shall apply to all Procurements issued after the effective date of these regulations.
- B. Contract Effective Date. The effective date of any Procurement shall be the date contained in the Contract. No work or Services shall commence prior to the issuance of a Purchase Order or written authority to proceed formally issued by the University Purchasing Department. Any work or Services performed by the Vendor prior to issuance of a Purchase Order or approved Change Order shall not be subject to payment by the University.

### **13.33 AMENDMENTS TO GENERAL CONDITIONS**

The University Chief Purchasing Officer or their Designee reserves the right to agree to alternate terms and conditions for a specific purchase in order to serve the best interests of the University and/or protect the health, safety or welfare, economic or otherwise, of the University and its community.

### **13.34 CONTRACT ADDENDA IN ADDITION TO THE GENERAL CONDITIONS OF PURCHASE**

- A. In addition to the General Conditions of Purchase, the additional Contract Addenda (“General Condition Addenda”) listed below shall apply to specific types/categories of Contracts with the University at the direction of the University Purchasing Department. The University Purchasing Department shall indicate any applicable General Condition Addenda in the Solicitation or other Procurement. These General Condition Addenda shall be considered as additional Contract terms and conditions with the University.
- B. The General Condition Addenda may be amended from time to time without Board approval, and at the discretion of the University Purchasing Department. The General Condition Addenda shall be considered Contract terms and not regulations.
- C. The University Purchasing Department may post the current General Condition Addenda on the University Purchasing Department’s website for reference purposes and/or may include them with the Solicitation.
- D. The University Purchasing Department reserves the right to add General Condition Addenda as necessary without further promulgation of regulation. Any additional General Condition Addenda would be considered a Contract term.
- E. In lieu or in addition to any General Condition Addenda, the University Purchasing Department reserves the right to include any Contract terms in a specific Solicitation or Procurement as necessary.

### **13.35 SEVERABILITY**

If any section, term, or provision of this regulation should be adjudged invalid for any reason, that judgment should not affect, impair, or invalidate any remaining section, term, or provision, which shall remain in full force and effect.

## **GENERAL CONDITIONS OF PURCHASE - ADDENDUM A GENERAL INSURANCE REQUIREMENTS**

Defined terms used in this Addendum to the General Conditions of Purchase have the same meaning as set forth in Part 12 of the University of Rhode Island Board of Trustees Procurement Regulations unless separately defined herein.

Unless otherwise specified in the solicitation or procurement, the following insurance requirements shall apply. These insurance requirements establish minimum types and limits of insurance coverage for many contract situations entered into by the University. It is possible that certain contract exposures are not addressed. Risk management and insurance questions regarding any Contract to be entered into by the University, including any that may be deemed "high-risk procurement" (i.e., either by amount of the procurement or solicitation and/or Vendor scope of Supplies or Services to be provided) should be reviewed with the University's Enterprise Risk Management Department.

Schedule A1: General Requirements

Schedule A2: Professional Services

Schedule A3: Information Technology

Schedule A4: Public Works

Schedule A5: Road and Transportation Projects

For purposes of this Addendum and Schedules A1-A5, the term "Vendor" does not include any branches, departments, agencies, offices, or commissions of the State that may contract with the University or the Board.

### Required Insurance

Vendor shall procure required insurance as set forth herein:

- a. At the sole cost and expense of Vendor.
- b. Obtain and maintain such required insurance in full force and effect during the entire term of the Contract until all obligations of Vendor have been discharged, including any warranty periods or extended reporting periods, against claims that may arise out of, are alleged to arise out of, directly or indirectly, in whole or in part, from or in connection with the Contract and/or result from the performance of the Contract.
- c. Any deductible, self-insured retention, or form of self-insurance under the policies shall be the sole responsibility of the Vendor and shall be disclosed to and acceptable to the University authorized personnel.
- d. Any required liability insurance policy that is to ensure any form of products liability

and/or completed operations exposure created by Vendor must provide extended coverage as follows:

1. When required liability insurance policy uses "Occurrence" coverage trigger (including that known as "Reported Occurrence"):
  - a. Policy issued by same insurer for Vendor as of effective date of Contract between the University and Vendor or by comparable insurer providing renewal insurance policy of 1-same coverage terms and conditions of prior expired policy or 2-coverage at least equal to that required by Contract.
  - b. Such coverage must be provided for a period of not less than five (5) years after the later of:
    - i. when the Contract has ended; or
    - ii. when products or services have been put to intended use; or
    - iii. when hardware, software, buildings, other physical structures or repairs have been put to intended use.
  - c. Such required insurance can be provided by annual insurance policies or by single runoff policy commonly referred to as "discontinued products or operations."
2. When required liability insurance policy uses any form of "claims-first made trigger:"
  - a. Policy issued by same insurer for Vendor as of effective date of Contract between the University and Vendor or by comparable insurer providing renewal insurance policy of 1-same coverage terms and conditions of prior expired policy or 2-coverage at least equal to that required by Contract.
  - b. Provide coverage with a retroactive date on or before the effective date of the Contract or at the beginning of Contract work.
  - c. Such coverage must be provided for a period of not less than five (5) years after the later of:
    - i. when the Contract has ended; or
    - ii. when products or services have been put to intended use; or
    - iii. when hardware, software, buildings, other physical structures or repairs have been put to intended use.
  - d. Such required insurance can be provided by annual insurance policies or by single runoff policy commonly referred to as "discontinued products or operations."
- e. If "claims-first made" liability insurance policy is cancelled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Contract date, the Vendor must purchase extended reporting coverage for a minimum of five (5) years after completion of work.
- f. Required insurance limits to be provided by single insurance policy or through "follow form primary" layered excess insurance policies to obtain overall required limit(s).
- g. Vendor's Subcontractors to maintain same insurance.
- h. Any insurance obtained by Vendor that includes an "insured vs. insured" exclusion must be revised to exclude the University and its Board of Trustees as Additional Insured.
- i. The University Purchasing Agent reserves the right, in consultation with the Office of Risk Control and Insurance, to consider and accept alternative forms and plans of insurance or to require additional more extensive coverage for any individual requirement and can modify types of insurance and revise limits required of Vendor at any time during the term of this Contract.

## Schedule A1 – General Requirements

Defined terms used in this Addendum to the General Conditions of Purchase have the same meaning as set forth in Part 12 of the University of Rhode Island Board of Trustees Procurement Regulations unless separately defined herein.

### Required Insurance:

Commercial General Liability Insurance. Commercial General Liability Insurance (“CGL”) based on Insurance Services Office (“ISO”) most recent version of Commercial General Liability policy form CG00 01, or its equivalent:

Covering bodily injury (including death), broad form property damage, personal and advertising injury, Independent Contractors, products and completed operations and contractual liability.

Such insurance coverage is subject to a minimum combined single limit of \$1,000,000 per occurrence, \$1,000,000 general aggregate and \$1,000,000 products/completed operations aggregate.

The general aggregate must be on a “per project” or “per location” basis.

Shall include waiver of subrogation in favor of the University.

Include the University and its Board of Trustees as additional insured on a primary and non-contributory basis.

The Vendor shall submit a copy of any policy endorsement, or blanket endorsement, evidencing the University and its Board of Trustees as additional insured<sup>1</sup> on a primary and non-contributory basis and a waiver of subrogation in favor of the University. All endorsements shall be subject to review and approval by the authorized University personnel.

Automobile Liability Insurance, as applicable. Automobile Liability Insurance based on ISO most recent version of Business Automobile Policy (“BAP”) CA 00 01, or its equivalent:

Covering bodily injury and property damage for any vehicles used in conjunction with the performance of this Contract including owned, non-owned, and hired vehicles.

If a Vendor does not own any vehicle at any time during the duration of this Contract, then the Vendor can seek hired and non-owned automobile coverage as provided by BAP or by hired non-owned automobile coverage endorsement to CGL.

At a minimum Vendor must maintain hired and non-owned automobile coverage for the full duration of this Contract.

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<sup>1</sup> Any time Vendor is responsible for construction of any kind the additional status for the University shall include additional Insured-products/completed operations in addition to additional insured-premises/operations.

Such insurance coverage is subject to a minimum combined single limit of \$1,000,000 per occurrence.

Shall include waiver of subrogation in favor of the University.

Include the University and its Board of Trustees as additional insured on a primary and non-contributory basis.

The Vendor shall submit a copy of any policy endorsement, or blanket endorsement, evidencing the University and its Board of Trustees as additional insureds on a primary and non-contributory basis and a waiver of subrogation in favor of the University. All endorsements shall be subject to review and approval by the authorized University personnel.

#### Workers' Compensation and Employers' Liability.

Statutory coverage as required by the workers' compensation laws of the State of Rhode Island, plus any applicable state law other than the State of Rhode Island if employee(s)' state of hire is other than the State of Rhode Island or employee(s)' work related to the Contract is not in the state of Rhode Island.

Policy form based on NCCI or its equivalent.

Employers' Liability with minimum limits of \$100,000 each accident, \$100,000 disease or policy limit and \$100,000 each employee or minimum amount necessary for umbrella/excess liability policy of Vendor.

A Vendor neither eligible for, nor entitled to, Worker's Compensation who is an independent Vendor under Rhode Island law must comply with the statutory procedure precluding an independent Vendor from bringing a workers' compensation claim against the University.

Policy to include waiver of subrogation in favor of the University.

The Vendor shall submit a copy of any policy endorsement or blanket endorsement evidencing the waiver of subrogation in favor of the University. All endorsements shall be subject to review and approval by the University authorized personnel.

Crime Insurance, as applicable. Crime Insurance to cover dishonest acts of Vendor that result in a loss of any University property, including funds or securities of any kind, plus any other entity or person's property, including funds or securities of any kind, entrusted to the University that is in the custody or control of the Vendor. The policy shall:

Include insuring agreements for employee dishonesty, forgery/alteration, theft of money and securities, robbery and safe burglary, money order and counterfeit currency, computer crime and funds transfer fraud.

Include an endorsement for "Client's Property" using the current edition of ISO form CR 04 01 or the equivalent;

Have minimum combined limits of not less than \$500,000 per occurrence; however, in no instance shall the combined limits be less than fifty per cent (50%) of the value of the Contract or based on the amount of funds that may be diverted, whichever is greater.

Name the University as loss payee based on the current edition of ISO CR 20 14 or the equivalent.

Not contain a condition requiring an arrest.

When Vendor has custody of University funds in excess of \$250,000 then Vendor must have crime coverage commonly referred to as Social Engineering Fraud ("SEF") in an amount equal to Computer Crime limit and/or Fraudulent Funds Transfer limit.

**All required insurance shall be:**

Placed with insurers:

Authorized to do business in Rhode Island and, when admitted insurers are not possible, then use of non-admitted insurers will be allowed to the extent acceptable to the University.

Rated "A-," class X or better by A.M. Best Company, Inc.

Any insurer with a lesser financial rating must be approved by the authorized University personnel.

The legal defense provided to the University under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the University is necessary.

As evidence of the insurance required by this Contract, the Vendor shall furnish to the University Certificates of Insurance, including confirmation of all required policy endorsements including, but not limited to, additional insured endorsements:

In form acceptable to the University prior to an award. Failure to comply with this provision may result in rejection of the bid offer.

All certificates of insurance, whenever issued, shall include the requirement of the insurer for thirty (30) days advance written notice to the University of cancellation, non-renewal, potential exhaustion of policy limits or any other changes to any insurance policy. .

Certificates of Insurance and required endorsements shall thereafter be submitted annually or earlier upon expiration and renewal of any of the policies.

All Certificates of Insurance and to the extent possible endorsements shall reference the University procurement number.

The University retains the right to demand a certified copy of any required insurance policy, Certificate of Insurance or endorsement.

The Vendor shall be responsible to obtain and maintain insurance on any real or personal property owned, leased or used by the University that is in the care, custody or control of Vendor. All property insurance of Vendor must include a waiver of subrogation that shall apply in favor of the University.

No warranty is made that the coverages and limits listed herein are adequate to cover and/or protect the interests of the Vendor for the Vendor's operations. These are solely minimums to protect the interest of the University.

The University shall be indemnified and held harmless as required by the Contract and to the full extent of any coverage actually secured by the Vendor in excess of the minimum requirements set forth in Schedules A1-5.

The Vendor shall use at its own risk and insure at its own cost any of its owned, leased or used real or personal property. All such insurance of Vendor must include a waiver of subrogation that shall apply in favor of the University.

The Vendor shall comply with any other insurance requirements including, but not limited to, additional coverages or limits contained in the procurement or solicitation.

Failure to comply with these insurance requirements is a material breach entitling the University to terminate or suspend the Contract immediately.

These insurance requirements shall survive expiration or termination of the Contract.



## Schedule A2 – Professional Services

### Definitions

Defined terms used in this Addendum to the General Conditions of Purchase have the same meaning as set forth in Part 12 of the University of Rhode Island Board of Trustees Procurement Regulations unless separately defined herein.

“Professional Services Insurance” means liability insurance designed to protect traditional professionals (e.g., accountants, attorneys) and quasi-professionals (e.g., real estate brokers, consultants) against liability incurred as a result of errors and omissions made in performing their professional services to the University. Although there are a few exceptions (e.g., physicians, architects, and engineers), most professional liability policies only cover economic or financial losses suffered by the University as opposed to bodily injury (BI) and property damage (PD) claims. This is because the latter two types of loss are typically covered under commercial general liability (CGL) policies. The vast majority of professional liability policies are written with claims-made coverage triggers. In addition, professional liability policies contain what are known as “shrinking limits,” meaning that unlike CGL policies (where defense costs are paid in addition to policy limits), the insurer’s payment of defense costs reduces available policy limits. Accordingly, when attempting to determine appropriate policy limits, insureds [the University] must consider the fact that because defense costs are often a high proportion of any claim settlement or judgment, they must usually purchase additional limits. The most common exclusions in professional liability policy forms are for BI, PD, and intentional/dishonest acts.<sup>2</sup>

### Required Insurance

In addition to meeting all requirements in Addendum A and Schedule A1, Vendor shall procure:

1. Professional Liability Insurance.<sup>3</sup>
  - a. Covering any damages to the University caused by any error, omission, wrongful act, or breach of Contract in performance of Vendor’s professional services to the University.
  - b. Combined single limit per occurrence shall not be less than \$2,000,000 and include an annual aggregate of not less than \$2,000,000.
  - c. Shall include waiver of subrogation in favor of the University to extent coverage to Vendor is not impaired.
  - d. If Vendor is providing services to the University where Vendor has access to paper and/or e-data privacy/confidential information, then refer to Schedule A3.

Environmental/Pollution Liability Insurance, and Working with Children, Elderly or Disabled

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<sup>2</sup> Definition based on one used by International Risk Management Institute: <https://www.irmi.com/term/insurance-definitions/professional-liability>.

<sup>3</sup> Medical malpractice insurance whether for an individual practitioner such as MD, OD or DMD, hospital or nurses, is considered a subset of Professional Liability insurance. When medical malpractice insurance may be required consult with University Risk Control and Insurance.

Persons as applicable to the procurement or solicitation:

e. .

2. Environmental/Pollution Liability Insurance when past, present or future hazard is possible.

Environmental/Pollution Liability Insurance coverage for bodily injury, property damage and resulting loss of use and environmental damages resulting from sudden accidental (and/or gradual if appropriate) pollution and related cleanup costs arising out of the work or services to be performed under the Contract:

- a. If coverage is on a "claims-first made" basis then 1-any retroactive date will precede the effective date of the Contract, and 2- remain in-force for the later period of five years after Contract has ended and/or work by Vendor has been put to its intended use.
- b. Per occurrence limits of no less than \$1,000,000 per occurrence and \$2,000,000 aggregate. The policy shall include defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages.
- c. Policy to include the University and its Board of Trustees as additional insured for work performed by Vendor for the University to the extent coverage is not subject to an insured versus insured exclusion. Additional insured status for the University to be on a primary and non-contributory basis.
- d. Shall include waiver of subrogation in favor of the University.
- e. Vendor shall submit a copy of any policy endorsement, or blanket endorsement, evidencing the University and its Board of Trustees as additional insureds on a primary and non-contributory basis and a waiver of subrogation in favor of the University. All endorsements shall be subject to review and approval by the authorized University personnel.

For environmental engineering and consultant services, the environmental liability insurance may be included with errors and omissions insurance and coverage if on a claims-made basis and will remain in effect for the period of the Contract with a minimum extended reporting period of five (5) years.

3. Working with Children, Elderly or Disabled Persons-Physical Abuse and Molestation Liability

Insurance. Physical Abuse and Molestation Insurance covering damages arising out of actual or threatened physical abuses; mental injury; sexual molestation; negligent hiring, employment, or supervision; negligent investigation or reporting to proper authorities; and retention of any person for whom the Vendor is responsible:

- a. Coverage shall be written in an amount not less than \$1,000,000 per occurrence.
- b. Coverage can be provided by a separate policy or as an endorsement to the commercial general liability or professional liability policies. The limits shall be exclusive to this required coverage.
- c. When policy uses any form of "claims-first made trigger:"
  - i. Remain in-force for a period of five (5) years after the Contract has ended;
  - ii. Provide coverage with a retroactive date on or before the Effective Date of the Contract or at the beginning of Contract work; and,
  - iii. If coverage is cancelled or not renewed, and not replaced with another claims-made policy with a retroactive date prior to the Contract date, the Vendor must purchase extended reporting coverage for a minimum of five (5) years after completion of work.
- d. Shall include waiver of subrogation in favor of the University.
- e. Policy to include the University and its Board of Trustees as additional insured for work performed by Vendor for the University to the extent that coverage is not subject

to an insured versus insured exclusion. Additional insured status for the University to be on a primary and non-contributory basis.

- f. The Vendor shall submit a copy of any policy endorsement, or blanket endorsement, evidencing the University and its Board of Trustees as additional insureds on a primary and non- contributory basis and a waiver of subrogation. All endorsements shall be subject to review and approval by the authorized University personnel.

## Schedule A3 – Information Technology

### Definitions

Defined terms used in this Addendum to the General Conditions of Purchase have the same meaning as set forth in Part 12 of the University of Rhode Island Board of Trustees Procurement Regulations unless separately defined herein.

“Information Technology Insurance” means insurance designed to cover providers of technology services or products. For example, data storage companies and website designers provide technology services, while computer software and computer manufacturers offer technology products.<sup>4</sup>

“Technology E&O Insurance” mean insurance policies which cover both liability and property loss exposures due to errors and omissions by providers of technology products and services. Major liability insuring agreements include losses resulting from: (1) technology services, (2) technology products, (3) media content, and (4) network security breaches. Key property insuring agreements provide coverage for extortion threats, crisis management expense, and business interruption. Technology E&O Insurance is often confused with Cyber/Privacy Insurance. In contrast to Technology E&O Insurance, cyber and privacy insurance is intended to protect *consumers* of technology products and services. Nevertheless, Cyber/Privacy Insurance policies do offer a number of the same insuring agreements as Technology E&O Insurance.

“Cyber/Privacy Insurance” means insurance designed to cover consumers of technology services or products. More specifically, the policies are intended to cover a variety of both liability and property losses that may result when a business engages in various electronic activities, such as selling on the Internet or collecting data within its internal electronic network.<sup>5</sup> Note this coverage is not only for an electronic breach, but also for paper data breaches. Most notably, but not exclusively, Cyber/Privacy Insurance policies cover liability for a data breach in third party personal information, such as Social Security numbers, credit card numbers, Protected Health Information as defined in HIPAA and its implementing regulations, Personal Information as defined in HIPAA and its implementing regulations and Personal Information as defined in R.I. Gen. Laws § 11-49.3-1, *et seq.*, as amended, or as otherwise defined in the Contract (“Confidential Information”) is exposed or stolen by a hacker or other criminal who has gained access to Vendor’s electronic network. The policies cover a variety of expenses associated with both electronic and paper data breaches including notification costs, credit monitoring, costs to defend claims by state regulators, fines and penalties, and loss resulting from identity theft. In addition, the policies cover liability arising from website media content, as well as property exposures from: (a) business interruption, (b) data loss/destruction, (c) computer fraud, (d) funds transfer loss, and (e) cyber extortion. Cyber/Privacy Insurance is often confused with Technology E&O Insurance. In contrast to Cyber/Privacy Insurance, Technology E&O Insurance is intended to protect providers of technology products and services, such as computer software and hardware manufacturers, website designers, and firms that store data on an off-site basis. Nevertheless, Technology E&O Insurance policies do contain a number of the same insuring agreements as cyber and privacy policies.

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<sup>4</sup> <https://www.irmi.com/term/insurance-definitions/technology-errors-and-omissions-insurance>.

<sup>5</sup> <https://www.irmi.com/term/insurance-definitions/cyber-and-privacy-insurance>.

## Required Insurance

In addition to meeting the requirements in Addendum A and Schedule A1, Vendor shall procure required insurance as set forth herein:

Information Technology, Technology E&O or Cyber Privacy Insurance. The University will determine the type and amount of coverage required for each solicitation based on the work to be performed and an assessment of risk. Coverages that may be required include:

1. Technology E&O Insurance covering any damages caused by any error, omission, wrongful act or breach of Contract by Vendor in performance of contracted professional services, including, but not limited to, product failure, security failure, professional liability, intellectual property infringement and personal injury if limited or uninsured under commercial general liability insurance. Factors that will be considered include:

a) if Vendor provides key back office services

b) if Vendor has access to Protected Health Information as defined in HIPAA and its implementing regulations, Personal Information as defined in R.I. Gen. Laws § 11-49.3-1, *et seq.*, or as otherwise defined in the Contract (together Confidential Information”), or

c) if Vendor provides or has access to mission critical services, network architecture and/or the totality of confidential data.

2. Information Technology coverage for loss resulting from:

a) technology services,

b) technology products,

c) media content,

d) network security breaches and breach expenses incurred by the University.

3. Cyber/Privacy Insurance to include:

i. Regulatory liability;

ii. Information security and privacy, regardless of the media involved;

iii. Network interruption and/or business interruption;

iv. Digital asset loss of the University;

v. Event breach costs including but not limited to crisis management (such as forensic investigation, legal fees), public relations, notification costs, call center operation costs, credit file monitoring and identity theft insurance;

vi. Placing and lifting of security freezes;

vii. Cyber extortion;

viii. Online media liability (i.e., including but not limited to website content);

ix. Costs to defend, including but limited attorney fees and settle; and,

x. Fines and penalties when insurable under appropriate state or federal law.

## **Schedule A4 – Public Works**

Defined terms used in this Addendum to the General Conditions of Purchase have the same meaning as set forth in Part 12 of the University of Rhode Island Board of Trustees Procurement Regulations unless separately defined herein.

As contained in the AIA documents and as required below. If the AIA documents' insurance provisions and the following insurance requirements conflict, the AIA documents' insurance requirements control.

In addition to meeting the requirements of Addendum A and Schedule A1, Vendor shall procure required insurance as defined herein:

Builder's Risk Insurance. The University will determine the type and amount of coverage required for each project based on the work to be performed and an assessment of risk. Coverage may include insurance for loss or damage to property such as materials, supplies, and equipment, as well as other costs or expenses caused by delay.

## **Schedule A5 –Road and Transportation Projects**

Defined terms used in this Addendum to the General Conditions of Purchase have the same meaning as set forth in Part 12 of the University of Rhode Island Board of Trustees Procurement Regulations unless separately defined herein.

The University will refer to the section contained in the State of Rhode Island Department of Transportation's Standard Specifications for Road and Bridge Design document commonly referenced as the Rhode Island Department of Transportation's "Blue Book" located at [www.dot.ri.gov/business/bluebook.php](http://www.dot.ri.gov/business/bluebook.php). If the Blue Book's insurance requirements and the following insurance requirements conflict, the Blue Books' insurance requirements control.

### **Required Insurance:**

Vendor shall procure required insurance as defined in Addendum A and Schedule A1.