

(2) Other Insurance by

- 2) Acceptance of certificates of insurance by 49er Foundation shall not limit the Contractor's liability under the Contract.
- 3) In the event the Contractor does not comply with these insurance requirements, 49er Foundation may, at its option, provide insurance coverage to protect 49er Foundation. The cost of the insurance shall be paid by the Contractor and, if prompt payment is not received, may be deducted from Contract sums otherwise due the Contractor.
- 4) If 49er Foundation are damaged by the failure of Contractor to provide or maintain the required insurance, the Contractor shall pay 49er Foundation for all such damages.
- 5) The Contractor's obligations to obtain and maintain all required insurance are non-delegable duties under this Contract.
- 6) The Contractor's liability for damages proximately caused by acts of God (as defined in Public Contract Code section 7105) and not involving Contractor negligence shall be limited to five percent of the Contract.

17. General Indemnity

Contractor shall indemnify, defend, and hold harmless 49er Foundation, the State of California, the Trustees of the California State University, University, and their respective board members, officers, agents, volunteers and employees from any and all claims and losses accruing or resulting to any other person, firm or corporation furnishing or supplying work, service, materials or supplies in connection with the performance of this Contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation related to, arising out of or resulting from Contractor's performance of this Contract.

18. Invoices

Invoices shall be submitted, in arrears, to the address provided in the Contract. Each invoice must contain the Contract number and Contractor's Identification number. Final invoice shall be marked as such. Contractor shall submit invoices to 49er Foundation for payment of goods and services rendered. Unless otherwise specified, 49er Foundation shall pay properly submitted invoices not more than 45 days after (i) 49er Foundation's acceptance of goods; (ii) the performance completion date of services; or (iii) receipt of an undisputed invoice, whichever is later. Late payment penalties shall not apply to this Contract. The consideration to be paid Contractor, as described within the Contract, shall be in full compensation for all of Contractor's expenses incurred in the performance of this Contract, including travel and per diem, unless otherwise expressly so provided.

19. Packing and Shipment

- a) All goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
 - i) Show the number of the container and the total number of containers in the shipment; and
 - ii) The number of the container in which the packing sheet has been enclosed.
- b) All shipments by Contractor or its subcontractors must include packing sheets identifying: the 49er Foundation's contract number; item number; quantity and unit of measure; part number and description of the goods shipped; and appropriate evidence of inspection, if required. Goods for different contracts shall be listed on separate packing sheets.

20. Delivery

Contractor shall strictly adhere to the delivery and completion schedules specified in this contract. Time, if stated as a number of days shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If Contractor delivers in excess of the quantities specified herein, the 49er Foundation shall not be required to make any payment for the excess deliverables, and may return them to Contractor at Contractor's expense or utilize any other rights available to the 49er Foundation at law or in equity.

21. Substitutions

Substitution of Deliverables may not be tendered without advance written consent of the 49er Foundation. Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the 49er Foundation.

22. Inspection, Acceptance and Rejection

Unless otherwise specified in the Statement of Work all deliverables may be subject to inspection and test by the 49er Foundation.

23. Taxes, Fees, Expenses, and Extras

- a) Contractor certifies that it shall comply with all California Sale and Use Tax requirements. Articles sold 49er Foundation are exempt from certain Federal Excise Taxes. 49er Foundation will furnish an exemption certificate on request.
- b) Unless specified otherwise, prices quoted shall include all required and applicable taxes.
- c) No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by 49er Foundation unless expressly included and itemized in the Contract. Unless otherwise indicated on the Purchase Order or Contract, on "FOB Shipping Point" transactions vendor shall arrange for lowest cost transportation, prepay, add freight to invoice, and furnish supporting freight bills over \$50. On "FOB Shipping Point" transactions, should any shipments under this Contract be received by 49er Foundation in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers by wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper, such as inadequate packing or loading or some inherent defect in the equipment and/or material, vendor shall, at its own expense, assist 49er Foundation in establishing carrier liability.
- d) Contractor certifies it will immediately advise 49er Foundation of any change in its retailer's seller's permit or certification of registration or applicable affiliate's sellers permit or certificate of registration.

24. Electronic Software Tax Liability

Contractor further agrees to deliver purchased software solely in an intangible form and via electronic means. Contractor shall be responsible for ensuring that the software is not delivered to the 49er Foundation in tangible form, and shall defend and indemnify the 49er Foundation for any and all tax liability resulting from Contractors failure to deliver the software as required by this Agreement.

25. Document Referencing

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

26. Patent, Copyright, and Trade Secret Indemnity

a) Contractor shall indemnify, defend, and hold harmless 49er Foundation, the State of California, the Trustees of the California State University, the University, and their respective officers, agents, and employees (collectively referred to as 49er Foundation), from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement or violation of any Intellectual Property Right, domestic or foreign, by any product or service provided hereunder. With respect to claims arising from computer Hardware or Software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to 49er Foundation, in addition to the foregoing provision, such indemnity rights as it receives from such third party ("Third Party Obligation") and will cooperate in enforcing them; provided that if the third party manufacturer fails to

any items that Contractor agreed to supply shall be borne and paid for solely by Contractor. 49er Foundation's rights and remedies provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under the Contract.

Nondiscrimination

D During the performance of this Contract, Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition, age, marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

E Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

F Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

Drug-Free Workplace Certification

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

D Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance

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