



Oakland University
General Terms and Conditions for Agreements

1. Parties.

- a. Oakland University. "Oakland University", "Oakland", "University" and all capitalized and non-capitalized permutations thereof mean Oakland University, a Michigan constitutional body corporate and institution of higher education located at 2200 N. Squirrel Road, Rochester, Michigan 48309-4401.
- b. Contractor. "Contractor" means all persons and entities including all foreign and domestic individuals, corporations, partnerships, business organizations, associations, trusts and other entities acting as a Merchant or otherwise who enter into an Agreement with Oakland University. Contractors may be identified by various terms indicative of the nature of the Services they will perform for the University, their use of Facilities or their contractual relationship, such as performer, vendor, consultant, licensee or customer.
- c. Non-Resident Aliens. If Contractor is a non-resident alien, the following documents must be furnished to the University before this Agreement is executed:
 - i. For Services to be performed in the United States:
 - Copy of I-94 (both sides);
 - Copy of visa and passport;
 - IRS Form W-8BEN or similar statement certifying foreign status or IRS Form 8233 (if individual is a resident of a country with applicable tax treaty with the United States);
 - Work authorization document (IAP-66 with Oakland University as sponsor for J-1 visa holder or I-20 for F-1 visa holder); and
 - Certification of academic activity (if applicable)
 - ii. For Services to be performed outside the United States:
 - IRS Form W-8BEN or similar statement certifying foreign status;
 - Documentation or statement certifying work was performed outside the United States.

2. Select Definitions.

- a. **ACCEPTANCE.** "ACCEPTANCE" AND/OR "ACCEPTED" AND ALL CAPITALIZED AND NON-CAPITALIZED PERMUTATIONS THEREOF, MEANS THE CONTRACTOR'S UNCONDITIONAL ACCEPTANCE OF AN AGREEMENT AND THESE TERMS AND CONDITIONS. THE CONTRACTOR'S SIGNATURE ON THE AGREEMENT AND/OR PERFORMANCE OF THE SERVICES AND/OR USE OF THE FACILITIES WILL CONSTITUTE THE CONTRACTOR'S UNCONDITIONAL ACCEPTANCE OF THE UNIVERSITY'S TERMS AND CONDITIONS NOTWITHSTANDING ANY ADDITIONAL OR DIFFERENT OR OTHER CONTRACTOR TERMS OR CONDITIONS CONTAINED IN ANY PRIOR OR SUBSEQUENT WRITTEN STATEMENTS, ORDER FORMS OR ACKNOWLEDGEMENTS, INVOICES, OR OTHER DOCUMENTS OR VERBAL STATEMENTS, SUBMITTED AND/OR MADE BY THE CONTRACTOR. ADDITIONAL OR DIFFERENT OR OTHER CONTRACTOR TERMS AND CONDITIONS ARE HEREBY OBJECTED TO AND REJECTED BY THE UNIVERSITY IN THEIR ENTIRETY AND WHICH ARE NULL AND VOID, HAVE NO FORCE OR EFFECT, AND ARE NOT BINDING ON THE UNIVERSITY.
- b. Agreement. "Agreement" and/or "Contract" and all capitalized and non-capitalized permutations thereof means a written agreement between the University and a Contractor, including without limitation University purchase orders, and/or those Contractor representations other than additional or different or other contractual terms and conditions that are contained in Contractor's written statements or informational responses, order forms, acknowledgements, invoices or other Contractor documents that are attached to the written agreement, (which may include the contractual provisions of a Sponsor if the Services are funded by a public or private contract and/or grant to the University) and amendments

thereto, to provide Services to the University and/or to use Facilities, that is signed by a duly authorized representative of the University and Accepted by the Contractor.

- c. Contract Document. "Contract Document" means the Agreement and the Terms and Conditions. The Contract Document forms and embodies the complete contractual relationship between the University and the Contractor.
 - d. Facilities. "Facilities" means the University's real and personal property including buildings and grounds and appurtenances appertaining thereto.
 - e. Goods. "Goods" and all capitalized and non-capitalized permutations thereof mean goods as defined by the Uniform Commercial Code as adopted in Michigan.
 - f. Merchant. "Merchant" means a person that deals in Goods of the kind or otherwise holds itself out by occupation as having knowledge or skill peculiar to the practices or Goods involved in the transaction or to which the knowledge or skill may be attributed by the person's employment of an agent or broker or other intermediary that holds itself out by occupation as having the knowledge or skill.
 - g. Services. "Services" means all products and services, performances, reports, materials, transactions in goods, present or future sales of goods, products and other deliverables to be performed or delivered by the Contractor pursuant to the Agreement and all other services related thereto.
 - h. Technology. "Technology" means computer and information technology Services including software, software systems development and hardware, systems analysis, programming, integration, design, consulting, development and modification; training relating to computer software and hardware; marketing, selling, servicing, distributing, installing, maintaining, management, repair and maintenance of computer software and hardware, networks and systems; data entry, processing, modification, transmission, verification, maintenance, storage, retrieval, hosting and preparation of data output; and "Technology Services" includes Services providing direct access to the University's systems and otherwise holding University data.
 - i. Term. "Term" means the time period during which the Agreement is in effect.
 - j. Terminate. "Terminate" and all capitalized and non-capitalized permutations thereof means to terminate and/or end and/or "cancel," "cancellation" and all permutations of the word cancel as defined in the Uniform Commercial Code.
 - k. Terms and Conditions. "Terms" and/or "Conditions" means Oakland University Terms and Conditions in effect on the date the University signs the Agreement or the date the Contractor accepts the Agreement, whichever date is later.
 - l. University Policies. "University Policies" means those University administrative and other policies, rules, regulations, practices, procedures and ordinances in effect while the Services are being provided and/or the Facilities are being used. The University Policies are incorporated into the Contract Document.
 - m. Use. "Use" and all capitalized and non-capitalized permutations thereof when referencing Facilities means the limited, non-exclusive, non-transferable, revocable-at-will, licensed use of the Facilities in a manner appropriate to the purposes set forth in the Agreement and consistent with the uses permitted by the Contract Document.
3. Support.
- a. Space and Equipment. The University will provide the Contractor with only that working space, equipment, furniture and utilities as the University deems necessary for performance of the Services and/or use of the Facilities.
 - b. University Employees. The Contractor will not hire any University employee to perform any Services.

4. Payment.

- a. Contractor Information. The Contractor must deliver a complete, accurate, signed Internal Revenue Service Form W-9, non-resident alien documentation (if applicable) and an invoice to the person who signed the Agreement on behalf of the University before the University will pay the Contractor for Services.
- b. Satisfactory Services. The University will pay the Contractor only for those Services that meet any standards, specifications and requirements contained in the Agreement and that are performed in a timely, workmanlike, professional manner that meet or exceed industry standards.
- c. Expenses. The University will not pay the Contractor's lodging, travel or any other expenses unless specified in the Agreement, and then, only consistent with University Policies applicable to reimbursement of University employees.
- d. Set-off. The University will withhold and/or reduce payment to the Contractor as reimbursement for any amounts owed by the Contractor to the University including without limitation damages to University Facilities caused by the Contractor's acts and/or omissions.
- e. Payments to Contractors. The University will pay the Contractor by check, after completion of the Services and thereafter within forty-five (45) calendar days from the date the University receives the Contractor's invoice, unless otherwise specified in the Agreement. The University also reserves the right to pay the Contractor by electronic means if available and/or through the University's payroll or other payment systems.

5. Intellectual Property; Designs; Confidential, Covered and Protected Information and Trademarks.

- a. Work for Hire. The Services are works made for hire. All rights, title and interests to any copyright is vested in the University, and the Contractor hereby assigns any copyright rights related to or in the Services to the University. If a court of competent jurisdiction orders that the Contractor owns the copyright, then the Contractor hereby grants the University an irrevocable, perpetual, royalty-free license to use the copyright in any form or manner for its educational and/or non-commercial use.
- b. Patents. The Contractor will deliver complete information regarding any invention, discovery, material, method, process, product, program, software or use made or conceived by the Contractor in the course of or in connection with the Services and/or this Agreement, and the University has the sole right to determine whether and where a patent application will be filed and to determine the disposition of the title to and all rights under any patent that may result. The Contractor will, at the University's expense, execute all documents and do all things necessary or proper with respect to the University's patent application.
- c. Sponsorships. If the Services are funded by a public or private contract or grant to the University ("Sponsors" or "Sponsorship") that provides for a different disposition of copyrights and/or patents than set forth in Paragraphs 5a and/or 5b above, then the Sponsorship will control.
- d. Designs. All notes, designs, drawings, memoranda, reports, software and other technical data produced or developed by the Contractor pursuant to the Agreement are the property of the University and must be delivered to the University upon demand.
- e. Confidential Information. The Contractor cannot publish or otherwise disclose to any person or entity, other than the University, any information or data obtained as a result of the Agreement from the University, private individuals or private or public entities, except with the consent of the University and such person or entity.
- f. Covered Information. "Covered Information" means "customer," "nonpublic personal information," "personally identifiable financial information," "protected health information," "student financial information" and "educational records" as defined by the applicable United States Code of Federal Regulations; and credit and credit card information and social security numbers. If the University discloses any Covered Information to the Contractor in connection with the Services, the Contractor will: (i) implement and maintain appropriate safeguard standards for Covered Information consistent with applicable United States Code of Federal Regulations requirements and industry standards and encrypt personally identifiable financial information and social security numbers in both storage and

transmission; (ii) use the Covered Information only in connection with the performance of its Services; (iii) not share, sell, license or otherwise transfer or disclose Covered Information to any other person or entity; (iv) notify the University's Office of Legal Affairs in writing no more than one (1) business day after any unauthorized use or disclosure of Covered Information, and use its best efforts to stop said unauthorized use or disclosure and confine and limit the effects of the unauthorized use or disclosure; and (v) return forthwith all Covered Information to the University, or if the University agrees in writing destroy the Covered Information, upon completion of the Services or termination of the Agreement. The Contractor will also provide the University with written reports, documents and other information relating to the unauthorized use or disclosure upon the University's request, and reimburse the University for the University's actual costs and expenses to notify affected individuals and authorities and to remedy the unauthorized use or disclosure, which may include without limitation providing affected individuals with credit protection services.

- g. Protected Information. If the Services contain any data or information controlled by the International Traffic in Arms Regulations, the Export Control Regulations, or any other regulations of the United States that may be promulgated and/or amended from time to time, that prohibits the transfer of such data or information to foreign persons or entities whether inside or outside the United States without an export license or other written approval of the United States government agency ("Protected Information"), then: (i) the Contractor will notify the University by submitting such Protected Information to the University's Office of Grants, Contracts and Sponsored Research with a written statement identifying the applicable control category on the Commerce Control List, the US Munitions List, the Export Control Regulations, or other applicable list or regulations; and (ii) if the Contractor does not provide such written notice to the University's Office of Grants, Contracts and Sponsored Research, then the Contractor warrants and represents to the University intending the University to rely thereon, that the Services contain no Protected Information. Notwithstanding anything contained in the Contract Document to the contrary, the Contractor hereby releases the University of any and all liability of every kind, nature and description if the University elects not to accept the Contractor's Protected Information and the Services in which the Protected Information is contained.
- h. Trademarks. The name "Oakland University," the University's trademarks, service marks, trade names, graphic images and logo(s), and permutations of each are trademarked with the State and/or the United States government ("University Marks"). Other than in acknowledgements in publications (see Paragraph 6) the Contractor will not otherwise use any University Mark without the prior written approval of the University.
6. Acknowledgements in Publications. The Contractor will acknowledge the University and/or Sponsors in any publication by use of the following statement by footnote or otherwise: *"This work was performed under the sponsorship of OAKLAND UNIVERSITY, Rochester, Michigan and (insert other Sponsor, if appropriate)."* If the publication is copyrighted, the statement *"Reproduction of this article (insert the customary credit to the source) is permitted"* must be included. Except as set forth herein, the Contractor will not otherwise use the University's name in publications, news releases, advertising, speeches, technical papers, photographs, and/or any other releases of information regarding the Agreement or data developed under the Contract Document without the University's prior written approval.
7. Examination of Records. The Contractor will give the University and any Sponsor full and immediate access to, and the right to examine, any pertinent Contractor books, documents, papers and/or records involving transactions related to the Contract Document.
8. Conflicts of Interest. The Contractor affirms that to the best of its knowledge there exists no actual or potential conflict-of-interest between the Contractor's family, business, or financial interests and providing the Services. The Contractor will not attempt to influence any University employee by the direct or indirect offer of anything of value. The Contractor also warrants that no officer or employee of the University has or will have a direct or indirect personal financial interest in the Agreement. The Contractor also affirms that neither the Contractor nor any of its employees has paid or agreed to pay any person, other than bona fide employees and consultants working solely for the Contractor, any fee, commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the execution of an Agreement. In the event of change in either Contractor's interests or Services under this Agreement, the Contractor will inform the University regarding all possible conflicts-of-interest which may arise as a result of such change. The Contractor agrees that conflicts-of-interest will be resolved to the University's satisfaction or the University may terminate the Agreement. As used herein, "conflicts-of-interest" includes without limitation conflicts-of-interest that are defined under the laws of the State of Michigan.

9. Permitted Uses. The Contractor will conduct only lawful activities in and upon the Facilities and will not commit, suffer, or permit any damage to or waste of the Facilities or any nuisance or hazard to occur in or upon the Facilities. The Contractor will not use the Facilities or permit the Facilities to be used in a manner that would be inconsistent with University Policies or the overall mission of the University as a Michigan public institution of higher education, or in any way bring discredit or other injury to the University.
10. Use of Non-University Grounds and Security and Emergency Services. The Contractor will coordinate with other political subdivisions or governmental entities and provide necessary, reasonable, or appropriate security and emergency (medical, first-aid, etc.) services in connection with Services and/or use of Facilities at the Contractor's sole cost and expense. Neither the University Department of Public Safety nor any other University department will provide security or emergency (medical, first-aid, etc.) services for the Contractor on or at the Facilities or otherwise, and the Contractor relieves the University of all responsibility to provide such security services or any other related services.
11. Delivery. Sale of Goods to the University is FOB destination, which unless otherwise stated in the Agreement is the University in Rochester, Michigan. Contractor assumes all responsibility for packing, crating, delivery and transportation of the Goods and all related costs associated therewith.
12. Rejection of Goods and/or Services. All Goods and/or Services purchased by the University are subject to inspection, testing, and approval by the University. The University retains the right to reject Goods and/or Services and/or to correct defects. The Contractor will reimburse the University for the University's actual expenses incurred to correct defects. The University may also refuse delivery of Goods and/or Services the University deems defective or non-conforming, or, after notifying the Contractor of the defect or nonconformity, hold defective Goods and/or Services for thirty (30) calendar days awaiting instructions from the Contractor. After the 30-calendar day period, the University will dispose of the Goods and/or Services in any manner the University deems appropriate without liability. The Contractor is responsible for the cost of handling, packing, and transportation incurred in returning or disposing of defective or nonconforming Goods or Services. If the inspection shows that the Contractor is in Default, the University may immediately cancel the Contract Document and hold the Contractor responsible for any excess costs in procuring replacement Goods and/or Services.
13. Miscellaneous.
 - a. Consideration. The Contractor hereby acknowledges adequate consideration for entering into the Contract Document.
 - b. Independent Contractor. The Contractor is an independent contractor and not an employee, partner, joint venturer, servant, representative or agent of the University for any purpose whatsoever.
 - c. Assignment, Subcontracting, Sublicensing and Subordination. The Contractor may not assign its rights or interests in the Contract Document, delegate performance of its duties under the Contract Document, subcontract the Services, or sublicense the use of Facilities without the prior written consent of the University. The University can assign the Contract Document or subordinate the Contract Document to any deed of trust or other interest that the University places on or effects the Facilities, and all renewals, modifications, replacements and extensions thereof, without the prior written consent of the Contractor.
 - d. Contractor Qualifications. The Contractor warrants to the University intending the University to rely thereon that: (i) it has and will maintain throughout performance of the Services and/or use of the Facilities all licenses required by law; (ii) it is qualified by experience and/or expertise to perform the Services and/or use the University's Facilities; (iii) it owns or has a license to sublicense the use of all copyrights, patents, trademarks, trade secrets and other intellectual property relating to any software, hardware and documentation (collectively, "Software/Hardware") used in the performance of the Services and/or use of the Facilities and that the Contract Document does not infringe upon or misappropriate the right(s) of any third party; (iv) all business the Contractor conducts in or upon the Facilities will conform to general social conventions and common public morals and decency; (v) if an entity, it is duly incorporated or otherwise organized, validly existing, its status is active, and it has the full right, power and authority to provide the Services and/or use the University's Facilities and to enter into, execute, deliver and perform the Contract Document; (vi) the execution, delivery, and performance of the Contract Document will not violate, conflict with or result in the breach of any other agreement to which the Contractor is a party; (vii) Contractor's signatory to the Agreement has the authority to contractually bind the Contractor to the Contract Document; and (viii) Contractor has performed a police records check and certifies to the University that neither the Contractor nor any of its employees,

servants, representatives or agents properly appear on the Michigan Public Sex Offender Registry or has been convicted of a felony, criminal sex offense, forcible assault or any other crime against a minor.

- e. Authorization. The Contractor has taken and/or obtained all necessary proceedings and consents, corporate or otherwise, to authorize the execution, delivery and performance of the Contract Document, and the Contract Document as duly authorized, executed and delivered constitutes the legal, valid, and binding obligation of the Contractor and is enforceable against the Contractor.
- f. Due Diligence Information. All information regarding the Contractor that was provided by or on behalf of the Contractor to the University prior to execution of the Agreement was true and accurate and all such information was provided to the University with the intent that the University rely thereon and to induce the University to enter into the Agreement.
- g. Disclaimer of Condition of Facilities. The Contractor accepts the Facilities in an "as is" condition. The Contractor's performance of the Services and/or use of the Facilities are conclusive evidence that the Facilities were in satisfactory condition when the Contractor performed the Services and/or used the Facilities. The Contractor inspected, tested and evaluated or had the opportunity to inspect, test, and evaluate the Facilities prior to performing the Services and/or using the Facilities and accepts the Facilities and the soil, design, surfaces, signage, physical features, environmental qualities and all other characteristics on or of the Facilities and any and all easements and encumbrances on the Facilities, without exception. The University does not warrant the suitability or fitness of the Facilities, the University's other real property, or the soil, physical features, environmental qualities, or any other characteristic on or of the Facilities.
- h. Indemnification. The Contractor, at its sole cost and expense, will defend, indemnify and hold the University, and the University's trustees, directors, officers, employees, agents, representatives and designees, in their official and personal capacities, (collectively "University Indemnified") harmless from and against any and all claims, demands, suits, damages, judgments, liabilities, losses and expenses, including without limitation personal or bodily injury to or death of any person, defamation, infringement of copyright, trademark, patent or other intellectual property, and reasonable attorneys' fees and expenses of litigation (collectively "Liabilities"), to which the University Indemnified may become subject actually or allegedly arising out of, relating to or resulting from the Contractor's Services and/or use of Facilities and/or the willful misconduct and/or negligence of Contractor or its directors, members, officers, employees, volunteers, agents, representatives and designees. If required by the University, the Contractor will name the University as an additional insured on its applicable and appropriate insurance policies for the purpose of effectuating this contractual indemnification; provided however, that the Contractor's obligation to indemnify the University Indemnified hereunder is not limited by the amount of any such insurance coverage. This indemnification will survive expiration or termination of the Contract Document.
- i. Insurance.
 - i. Personal Property. The Contractor's personal property of every kind, nature and description that may at any time be present on University property will be kept at the Contractor's sole risk, cost, and expense. The Contractor is responsible for the security of its personal property and any loss or damage to said personal property from any cause whatsoever, including without limitation theft, vandalism, steam, electricity, water, rain, snow, ice, or fire.
 - ii. Insurance Policies. The Contractor must be insured at its own expense for claims and damages arising out of Contractor's performance of the Services and/or use of Facilities, errors, omissions and negligent or wrongful acts, for an extended reporting period of not less than five (5) calendar years if written on a claims-made basis. The insurance may be for general liability insurance, excess umbrella insurance, automobile insurance, professional liability insurance, cyber insurance, pollution insurance, workers' compensation insurance and/or employer's liability insurance, but in all cases and in every respect and notwithstanding any insurance types and/or limit amounts contained in an Agreement, the Contractor's insurance must be commercially reasonable in the Contractor's industry and evidenced by a written insurance policy and/or certificates of insurance issued by an insurer licensed to do business in the State of Michigan and acceptable to the University. If the Contractor fails to secure or maintain such insurance, the University will not be required to perform any obligations under the Contract Document, but the Contractor will pay the University for any actual costs incurred by the University in connection with the Agreement upon demand. In the alternative, the University may, but is not required to, secure such insurance for the

University, and if so secured by the University, the Contractor will reimburse the University the actual costs for said insurance premiums upon demand.

- iii. Environmental Health and Safety. The Contractor will be responsible, at the Contractor's sole cost and expense, for insuring that all of its respective officers, employees, and agents comply with all of the following environmental health and safety rules, regulations and requirements:

(1) Life Safety:

- (a) Subject to all University Policies, the Cities of Rochester Hills and Auburn Hills ("Cities") with regard to fire and life safety;
- (b) Subject to inspections by the University and state or local inspectors;
- (c) Use of pyrotechnics must be approved by the University's Department of Environmental Health & Safety ("EH&S") and permits issued by EH&S and the respective Cities' Fire Departments; and
- (d) Storage of flammable chemicals must be in accordance with all regulatory requirements.

(2) Environmental/Regulatory:

- (a) Must comply with all Michigan Right to Know Laws;
- (b) Must comply with Hazardous Waste Disposal Laws; and
- (c) Must comply with any other applicable environmental rules, regulations, restrictions, laws and requirements.

(3) Health and Safety:

- (a) Must receive required health and safety training and refresher training according to regulatory requirements and as required by EH&S;
- (b) Must utilize personal protective equipment; and
- (c) Must observe all requirements with regards to safe working conditions, including without limitation, machine guarding, personal protective equipment, lock-out/tag-out, confined space, elevated work platform, etc.

j. Taxes.

- i. Sales Tax. The University is an agency of the State of Michigan exempt from state sales taxes and federal excise taxes.

- ii. University's Tax-Exempt Status. The University holds the status of an exempt organization under the Internal Revenue Code, and the Contract Document is intended to serve an essential governmental function and the Contract Document cannot be construed to conclude a contrary intent. Neither the University nor the Contractor intend the Contract Document to be a joint venture, partnership, trade, business, enterprise, or otherwise with a common goal of sharing profits or losses. The University does not have any working interest or operational control of the Contractor's business. The University has no profit motive whatsoever, but enters into the Contract Document with the sole intent and desire to further the University's educational mission and other exempt purposes, and in the belief that the Contract Document preserves, for purposes of its tax-exempt status, the University's ultimate control over the Facilities and the uses and activities to be made of and conducted in the Facilities, and allows the University to act exclusively in furtherance of the University's educational mission and other exempt purposes.

- iii. Contractor's Taxes. The Contractor will pay Contractor's own local, state and federal taxes, including without limitation social security and unemployment insurance taxes.

- k. Non-Reliance. The Contractor acknowledges that the University has not made any representations, warranties, assurances, or guarantees, of any kind, nature, or description, express or implied that the Contract Document will result in or cause the Contractor's business to succeed or achieve any specific objectives. The Contractor is capable of assuming, and does assume, all risks related to the Contract Document, and to any business conducted by the Contractor in, at or on the Facilities.

- l. Beneficiaries. The Contract Document is for the sole and exclusive benefit of the University and the Contractor and neither the University nor the Contractor intends to create a benefit in favor of any other person, entity, or third party.
- m. Compliance with Law. The Contractor will comply with all applicable federal, state, local, and municipal ordinances, regulations, restrictions, permit and licensing requirements and laws. The Contractor will also comply with all University Policies. The University can adopt or modify University Policies without restriction to operate and control the Facilities and other University property and to preserve the overall mission of the University as a Michigan public institution of higher education as determined to be necessary or appropriate by the University regardless of any negative financial, economic or business impact on the Contractor.
- n. Nonliability. The Contractor releases the University from all Monetary Damages other than nonpayment for the Services. The Contractor's sole remedy for a material breach of the Contract Document by the University is to recover payment for the Services. Neither the University nor University trustees, officers, employees, students, volunteers, agents, representatives or designees, in their official or personal capacities, will be liable for Monetary Damages other than payment for the Services, or otherwise, to the Contractor or the Contractor's directors, members, officers, employees or agents for any loss or damage of any kind, nature, or description and whether founded in tort, contract or otherwise, including without limitation costs, expenses, losses and damages that result from or arise out of sickness, bodily injury or death of any person, or damage to or loss or destruction of any tangible or intangible personal property, lost revenues or lost profits, any special punitive, incidental or consequential damages that accrue to the Contractor or the Contractor's business even if the University had knowledge of the possibility of such potential loss or damage, and whether caused by fire, water, accident, riot, strike, act of God, acts of terrorism, the making of repairs, alterations, additions or improvements, eminent domain by political subdivisions or governmental entities other than the University, causes beyond the University's reasonable control, by reason of the University's actions in fulfilling any University obligation under the Agreement, or from any other cause whatsoever ("Monetary Damages").
- o. Default. The Contractor will be in default of the Contract Document ("Default") if and when the Contractor: (i) fails to observe or perform any covenant, condition, agreement or obligation to be observed or performed pursuant to the Contract Document; (ii) a voluntary or involuntary petition in bankruptcy is filed for or against the Contractor and a bankruptcy or non-bankruptcy receiver or trustee is appointed for all, or substantially all, of the Contractor's assets; (iii) becomes insolvent or makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors; or (iv) enters into any agreement in contravention of any term, clause, provision or paragraph of the Contract Document.
- p. Termination. The Contract Document will terminate automatically and without the necessity of any further affirmative action upon a Default or expiration of the Term. The University may also terminate the Contract Document at any time and for any or no reason, including without limitation for convenience by giving the Contractor ten (10) calendar days' prior written notice. The University may also terminate the Contract Document immediately and without any prior notice if the University determines, in the University's sole and exclusive discretion, that proposed or implemented changes are made to the use of Facilities that would affect the University adversely, such as but without limitation, threatening life, damage or injury.
- q. Liquidated Damages. The assessment of any liquidated damages by the University, if any, is not a penalty, but represents damages sustained by the University due to the Contractor's Default, the true and full amount of which are extremely difficult to ascertain.
- r. Severability. If any term, clause, provision or paragraph of the Contract Document is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, such declaration will not affect the validity and enforceability of the remaining terms, clauses, provisions or paragraphs of the Contract Document.
- s. Notices. All notices to the University must be delivered to the person who signed the Agreement on behalf of the University and the University's Office of Legal Affairs, personally, or by commercial overnight carrier or first class U.S. mail only.

- t. Non-Waiver. No failure, delay or course of dealing on the part of the University in exercising any of its rights, remedies, powers or privileges under the Contract Document will be deemed to be a waiver of any such rights, remedies, powers or privileges, nor will any single or partial exercise of any right, remedy, power or privilege preclude any other further exercise of any right, remedy, power or privilege.
- u. Remedies. All legal and equitable remedies available to the University are cumulative and the use of any remedy by the University will not preclude or waive the use of any or all other remedies.
- v. Captions. The captions or headings in the Contract Document are for convenience only and in no way define or limit the scope or intent of any term, clause, provision, or paragraph.
- w. **ENTIRE AGREEMENT. THE CONTRACT DOCUMENT EMBODIES THE ENTIRE AND FINAL AGREEMENT BETWEEN THE UNIVERSITY AND THE CONTRACTOR FOR THE SERVICES AND FACILITIES AND SUPERSEDES ALL PRIOR DISCUSSIONS, NEGOTIATIONS, REPRESENTATIONS AND AGREEMENTS, WHETHER VERBAL OR IN WRITING. THERE ARE NO PROMISES, UNDERTAKINGS, REPRESENTATIONS, OR WARRANTIES BY THE UNIVERSITY NOT EXPRESSLY SET FORTH IN THE CONTRACT DOCUMENT.**
- x. **AMENDMENTS. NO AMENDMENT TO AN AGREEMENT IS EFFECTIVE UNLESS IN WRITING AND SIGNED BY THE PERSON WHO SIGNED THE FIRST AGREEMENT ON BEHALF OF THE UNIVERSITY. NO AMENDMENT TO THE INSURANCE PROVISIONS IN THE AGREEMENT IS EFFECTIVE UNLESS IN WRITING AND SIGNED BY THE UNIVERSITY'S RISK MANAGER. NEITHER THE AGREEMENT NOR ANY AMENDMENT THERETO CAN EFFECT AN AMENDMENT TO THE TERMS AND CONDITIONS. NO AMENDMENT TO THE TERMS AND CONDITIONS IS EFFECTIVE UNLESS IN WRITING AND SIGNED BY THE UNIVERSITY'S VICE PRESIDENT FOR LEGAL AFFAIRS.**
- y. Applicable Law and Forum. Michigan law, including without limitation the Michigan Persons with Disabilities Civil Rights Act, the Michigan Elliott-Larsen Civil Rights Act, the Michigan Governmental Tort Liability Act ("Act"), and the Michigan Uniform Commercial Code, all as may be amended from time to time, including the provision that illegal discrimination by the Contractor may be considered a material breach of the Contract Document, will govern the validity, construction and performance of the Contract Document. Michigan will be the forum for any legal or equitable proceedings in connection with the Contract Document and the Contractor hereby submits to *in personam* jurisdiction in Michigan, waives any objection Contractor may now or hereafter have to venue in Michigan or that any legal or equitable proceeding was brought in an inconvenient court, and agrees to service of process by overnight mail as well as any other manner permitted by Michigan law. Notwithstanding anything contained in the Contract Document to the contrary, whether express or implied, no provision of Contract Document waives the University's rights under the Act or effectively creates any direct or indirect liability for the University otherwise prohibited by the Act. The University may disclose any information described as confidential or proprietary in response to a judicial or administrative order or a freedom of information request.
- z. Binding Effect. The Contract Document will inure to the benefit of and be binding upon the Contractor and its successors and assigns.
- aa. Counterparts. The Agreement can be executed in several counterparts, each of which will be deemed an original, and all of which together will constitute one and the same instrument.
- bb. Signatories. The Contractor's signatory hereby jointly and severally guarantees all of the obligations of the Contractor under the Contract Document, which guarantee will inure to the benefit of the University and be binding upon the Contractor's signatory respective heirs, administrators, executors, successors and assigns.
- cc. Other Conflicts. In the event of any conflict, discrepancy or inconsistency in the terms and conditions contained in or among the Contract Document, the terms and conditions most favorable to the University, as determined by the University, will control.

dd. Effective Date. These Terms and Conditions are effective as of June 1, 2009.

END OF GENERAL TERMS AND CONDITIONS FOR AGREEMENTS

OLA-06-2009