

UNIVERSITY OF LOUISVILLE
PURCHASING DEPARTMENT

STATE CONTRACT
FOR PERSONAL SERVICES

Personal Service Contract Number PS <u>17-066</u> PeopleSoft SpeedType _____ Encumbrance Amt. _____ ***** This Contract ("Agreement") is effective on <u>November 29, 2016</u> (date of delivery to the Legislative Research Commission) This Contract ("Agreement") expires <u>June 30, 2017</u>

THIS CONTRACT ("Agreement") is made and entered
into this 29th day of November, 2016, by and
between the University of Louisville, hereinafter referred to

as the "First Party," and

Alvarez & Marsal Disputes and Investigations, LLC (A&M)

20-1114092

(Name of Individual or Firm)

(Social Security Number/Federal ID Number)

540 West Madison, Chicago, IL 60661

(Address)

hereinafter referred to as the "Second Party."*

*Second Party, or any principal thereof, will indicate by checking the appropriate box below if employed by the University of Louisville or any affiliate.

University of Louisville Employee? Yes No If Yes, Name _____

If yes, Second Party agrees to accept the agreement based on the law set forth in KRS45A.340 as it relates to conflicts of interest of public officers and employees.

WHEREAS, the First Party, in the exercise of its lawful duties, has determined upon the necessity of the performance of the following-described function(s):

Conduct a Special Forensic Investigation of the University of Louisville (UofL) relating to the activities
and accounts of the University of Louisville Foundation Inc. and its subsidiaries and affiliates (herein after
referred to as Foundation) which took place from July 1, 2010 to June 30, 2016 as detailed in Attachment A.

WHEREAS, the First Party has concluded that either state personnel are not available to perform said function, or it would not be feasible to utilize state personnel to perform said function; and

WHEREAS, the Second Party is available and would be qualified to perform such function; and

WHEREAS, for the hereinbefore-stated reasons, the First Party desires to avail itself of the services of the Second Party,

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

1. SERVICES

The Second Party will perform the services which are described with particularity in the attached letter (to which reference is made below) which is made a part hereof as if fully incorporated herein, or, if no letter is necessary, as hereinafter described with particularity as follows. Where applicable, both parties will work with the University of Louisville Office of Communications and Marketing to ensure compliance with the First Party's graphic identity standards and strategic planning/branding initiatives. When applicable (e.g. web pages), the Second Party's services will be in compliance with current Americans with Disability Act (ADA) requirements including the applicable current ADA Standards for Accessible Design, Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), Section 255 of the Communications Act, as amended, and applicable regs.

Phase I: Information gathering, data preservation, scope assessment & planning of subsequent phases.

Phase II: Perform analytics, testing & other investigative procedures, conduct investigatory interviews

& recovering/reviewing data based on any issues identified in Phase I.

Phase III: Documenting procedures & findings, preparing reports, presenting findings and

See attachment A for additional scope of work details.

2. CONSIDERATION

A. FEE

As fee for the services hereinbefore set forth, having been performed to the satisfaction of the First Party, the First Party agrees to pay the Second Party:

a sum not to exceed \$ 687,500.00

to be paid in the following manner or on the following terms: (Please state frequency of payment, amount to be paid for specific services rendered/milestone accomplished).

Total hours not to exceed 2,500 and all hours to be billed at a blended rate of \$275.00/Hour.

Work plans will be approved at 500 hour increments.

The Second Party's invoice(s) for fee shall be signed and shall include not less than the following information:

Name of individual, hours, date worked with description of services and deliverable provided.

The Second Party shall maintain supporting documents to substantiate invoices and shall furnish same if requested by the First Party.

The First Party payment terms are net 30 days, subject to applicable funding approval.

B. TRAVEL EXPENSES, if authorized herein.

The Second Party shall be paid for no travel expenses unless and except as specifically authorized by this paragraph as follows:

Reasonable travel expenses related to the work performed under this contract, including

transportation, lodging and meals. Total not to exceed \$60,000

Travel expenses, if authorized, shall be billed in the following manner:

Dates, name of individual traveling, descriptions of services and actual charge amounts.

C. OTHER EXPENSES, if authorized herein.

The Second Party shall be reimbursed for no other expenses of any kind, unless and except as specifically authorized as follows:

Forensic Technology fees not to exceed \$150,000

If the reimbursement of such expenses is authorized, the reimbursement shall be only on an out-of-pocket basis. Request for payment of same shall be processed upon receipt from the Second Party of valid, itemized statements submitted periodically for payment at the time any fees are due. The Second Party shall maintain supporting documents that substantiate every claim for expenses and shall furnish same if requested by the First Party.

D. MAXIMUM FOR FEE AND EXPENSES

The Second Party's fee, travel expense reimbursement (if any) and other expense reimbursement (if any) relative to the services shall not exceed a total of \$ 897,500.00.

3. INVOICING

- A. Invoicing for Fee: The Second Party's fee shall be by original invoice(s). The invoice(s) must conform to the method prescribed under Section (2), Consideration, Paragraph A and in compliance with D below.
- B. Invoicing for Travel Expenses: The Second Party must follow instructions prescribed under Section (2), Consideration, Paragraph B. Either original or certified copies of receipts must be submitted for airline tickets, motel bills, restaurant charges, rental car charges, and any other miscellaneous travel expenses.
See Attachment B
- C. Invoicing for Miscellaneous Expenses: The Second Party must follow instructions prescribed under Section (2), Consideration, Paragraph C. Expenses submitted shall be either original or certified copies.
- D. The Kentucky Model Procurement Code was recently amended to establish conditions for invoicing for fees for personal service contracts. "No payment shall be made on any personal service contract unless the individual, firm, partnership or corporation awarded the personal service contract submits its invoice on a form established by the committee." The Government Contract Review Committee has adopted a personal service contract invoice form that must be submitted with each invoice as a condition of payment. The Personal Service Contract Invoice Form shall be used for this purpose and may be found online at <http://louisville.edu/purchasing/forms/pscinvoiceform.pdf>.
- E. Invoicing for Agreements using federal funds (see item 11 below Supplier Certification): To assure that expenditures are proper and in accordance with the terms and conditions of the Agreement and approved project budget, invoices requesting payment under this Agreement should include the certification: "To the best of my knowledge and belief this report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Agreement. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)." By signing this Agreement, I am certifying, as an official who is authorized to legally bind the Second Party, that any invoices and reports sent by Second Party to First Party for payment under this Agreement comply with the above certification and will provide additional information, as requested, to

assure First Party that the expenditures are proper and in accordance with that certification.

4. SIGNIFICANT CONTRACT DATES

A. EFFECTIVE DATE

This agreement is not effective unless and until the agreement is filed with the Legislative Research Commission, with agreement accompanied by documentation of the need for such service and by documentation that state personnel are not available to perform such service or that it is not feasible for state personnel to perform such service.

B. DATES WORK IS TO BE PERFORMED

The period within the current fiscal year in which the services are to be performed under this agreement is from November 29 2016, to June 30 2017.
(Month & Day) (Month & Day)

C. EARLIEST DATE OF PAYMENT

No payment on this agreement shall be made before completion of the review procedure provided for in KRS 45A.705, unless and until alternate actions occur as set out in KRS 45A.695(7).

5. EXTENSIONS

At the expiration of its initial term, this agreement may, at the option of the parties hereto, be extended upon the same terms and conditions as set forth herein for further periods not to exceed twelve (12) months each, subject to the advance approval of the Associate Director of Purchasing. The terms and conditions of this agreement may be extended or amended according to the provisions of KRS Chapter 45A, and are subject to the approval of the Associate Director of the Department of Purchasing and/or the Legislative Research Commission's Government Contract Review Committee.

6. SOCIAL SECURITY

The parties are cognizant that the First Party is not liable for Social Security contributions pursuant to Section 418, 42 U.S. Code, relative to the compensation of the Second Party for this agreement.

7. CANCELLATION *See Attachment B*

~~The First Party shall have the right to terminate and cancel this agreement at any time upon thirty (30) days' written notice served on the Second Party by registered or certified mail or other delivery service providing verification of receipt (e.g. UPS, FedEx).~~

8. PURCHASING AND SPECIFICATIONS

The Second Party certifies by his signature hereinafter that he will not attempt in any manner to influence any specifications to be restrictive in any way or respect, nor will he attempt in any way to influence any purchasing of services or commodities by the First Party. For the purpose of this paragraph and Paragraph 9, "he" is construed to mean "they" if more than one person is involved and if a firm, partnership, corporation, or other organization is involved then "he" is construed to mean any person with an interest therein.

9. CONFLICT-OF-INTEREST LAWS AND PRINCIPLES

The Second Party hereby certifies by his/her signature hereinafter that he/she is legally entitled to enter into the subject agreement and certifies that he/she is not and will not be violating any conflict of interest statute, including KRS 45A.330 - 45A.340, 164.390, 45A.990 or KRS 11A.040 of the Executive Branch Code of Ethics, relating to the employment of former public servants.

All Bidders shall comply with the Copeland "Anti-Kick Back" Act (18 USC 874) as supplemented in the Department of Labor Regulations (29 CFR, Part 3). This Act provides that each Bidder, subcontractor or subgrantee is

prohibited from inducing, by any means, any person employed in the construction, completion or repair of public work to give up any part of the compensation to which he is otherwise entitled.

Conflicts: The Second Party hereby certifies that (1) neither he/she nor any member of his/her immediate family¹ is an employee of the University of Louisville or one of its affiliated corporations ("UofL employee") (2) no officer/managing partner of the Second Party nor any member of the officer's/managing partner's immediate family is a UofL employee and (3) no employee of the Second Party performing services for this Agreement nor that employee's immediate family is a UofL employee. The Second Party further certifies that neither he/she nor any member of his/her immediate family have contributed more than the amount specified in KRS 121.056(2), to the campaign of the gubernatorial candidate elected in the Commonwealth of Kentucky at the election last preceding the date of this Agreement. The undersigned's authorized signatory for the Second Party further swears under the penalty of perjury, that neither he/she nor the Second Party which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth, and that the award of this Agreement to him/her or the Second Party which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth. *See Attachment B*

Conflicts Policy: This section is applicable and needs to be completed if some funding comes from federal or sponsored projects (If Yes to either question in item 11 below.)

Does the Supplier maintain and enforce policy and procedures that are in compliance with 42 CFR 50?

Yes No URL (if yes): _____

If Yes, provide the URL of the applicable policy. If No², the Supplier agrees to abide by the current policy³ of the University including disclosure and reporting requirements and any necessary corrective actions for the duration of this Agreement. Disclosure and reporting of identified conflicts of interest related to this contract must be submitted to the Conflict of Interest Program of the University, in writing, no later than 30 calendar days after identification. Documentation, pursuant to this requirement, should be sent to:

Conflict of Interest Program
LL05 Jouett Hall
2301 South Third Street
University of Louisville
Louisville, KY 40292

10. COMPLIANCE AND CHOICE OF LAW

Second Party will comply with all applicable law, regulation and University of Louisville Policy. All questions as to the execution, validity, interpretation, construction and performance of this agreement shall be governed by the laws of the Commonwealth of Kentucky. Furthermore, the parties hereto agree that any legal action which is brought on the basis of this agreement shall be filed in the Franklin County Circuit Court of the Commonwealth of Kentucky.

11. SUPPLIER CERTIFICATION

Are any federal funds⁴ being used? Yes No

¹ Immediate family means the individual's biological, foster or adoptive parent, a stepparent, spouse, qualifying adult, a biological, adoptive or foster child, a step child, a legal ward or a person whom the individual has (or had during the person's youth) daily responsibility and financial support, mother, father, brother, sister, son, daughter, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandparents, and grandchildren of both the individual and spouse and / or qualifying adult. A qualifying adult must be over 18 years of age, and, if a blood relative (or relative by adoption or marriage) must be of the same or younger generation of the individual (as used in KRS 391.010), and, must be residing in the individual's household and have done so for a period of at least 12 months, and, must be financially interdependent (for example, have joint checking account or joint mortgage) for 12 months or longer, and, must be unmarried.

² If blank and either item in 11 is checked Yes, Second Party agrees to abide by current policy of the University.

³ UofL's policy to fulfill compliance with 42 CFR 50 can be found at: <http://louisville.edu/conflictofinterest/coi-policies> See "Addressing Potential Individual Conflict of Interest Policy and Procedures(PDF)"

⁴ Can include financing by a loan from the United States

If yes, note that the Supplier Certification contains multiple provisions that are applicable when the funding source is federal.

Are funds from a sponsored project⁵ being used?

Yes No

12. **OWNERSHIP OF INTELLECTUAL PROPERTY:** Second Party agrees that any and all inventions, improvements, modifications, discoveries, information, data and materials (hereinafter collectively "Intellectual Property") which are conceived, invented, authored, developed and/or reduced to practice in the performance of this agreement, are the sole property of the University of Louisville Research Foundation, Inc., a Kentucky non-profit corporation as the agent of the First Party for receiving grants and research agreements from external funding sources and which owns and controls intellectual property on behalf of the UofL ("ULRF"), and Second Party agrees to assign and does hereby assign to ULRF all rights, title, and interest in such Intellectual Property. Intellectual Property for which a copyright could be registered, including but not limited to software, computer programs, databases, web pages and documentation, and/or source code, (collectively, "Works") developed by Second Party for First Party, shall be considered "work for hire" such that ULRF, not Second Party, shall have full and complete ownership of all Works developed. Second Party shall provide such Works to First Party when completed, but no later than at the termination or expiration of this Agreement. To the extent that any Works may not, by operation of law, be a work made for hire in accordance with the terms of this Agreement, Second Party hereby assigns to ULRF all right, title, and interest in and to any copyright covering such Works, and ULRF shall have the right to obtain and hold in its own name any copyrights, registrations, or other proprietary rights that may be available. Second Party agrees to safeguard and keep confidential said Intellectual Property and all information (including records and dates) acquired from any source or developed by it in the performance of this Agreement. These conditions shall survive this Agreement. *See Attachment B*
13. **LOBBYING ACTIVITIES:** The Second Party certifies that it has and will continue to fully comply with the Lobbying Disclosure Act of 1995, and other applicable laws, with regard to services under this Agreement with First Party and will maintain documentation of such compliance available for inspection by First Party as its designated agents. No funds from the agreement are to be used for any campaign for or against any candidate for public office.
14. **BILLING SERVICES: Audits:** The First Party shall be informed by the Second Party of any audit by the Second Party of its records and operations at the University. The First Party shall receive a full report of any such audits (e.g. notification of the completion of any required audits, any adverse findings which impact this Agreement). The First Party or its designee shall have the right to conduct its own audit of the Second Party's records as they relate to this contract by giving seven (7) working days notice to the Second Party. The First Party shall notify the Second Party, in writing, of any deficiency made known as a result of said audits, in their accounting procedures. If the First Party audit should uncover any billing discrepancies of more than one (1) percent, the cost of such audit shall be at the Second Party's expense. *See Attachment B*
15. **INDEMNIFICATION:** The Second Party hereby agrees to indemnify and hold the First Party harmless from and against any costs, liability, expenses (including reasonable attorney fees), damages, and lawsuits whatsoever arising from the Second Party's performance of the terms of this agreement. *See Attachment B*
16. **CONFIDENTIALITY OBLIGATIONS:**
- 16.1. **General Confidentiality:** The Second Party acknowledges and understands that in order to perform the services it may receive confidential information from the First Party ("disclosing party" for this section) or that is from third parties who may have disclosed confidential information to the disclosing party. The Second Party receiving such confidential information ("receiving party" for this section) further acknowledges that it may create materials or documents that include said confidential information as a result of the services performed under this Agreement. For purposes of this Agreement such information, materials and documents are referred to as "Confidential Information."

⁵ Sponsored projects have speed types beginning with CB, CN, CP, EB, EN, EP, IN, IB, IP, GB, GN, GP or CS.

Confidential Information shall be maintained in trust and confidence by the receiving party. The receiving party agrees to use all reasonable diligence to prevent disclosure of Confidential Information to any third party and to refrain from using or disclosing Confidential Information for any purpose other than as provided under this Agreement (or as otherwise specified in writing) and shall not assert ownership in the other party's Confidential Information. The receiving party agrees that it will take reasonable steps to ensure that it and its employees will abide by the confidentiality obligations of this Agreement.

It is understood that the receiving party does not have such obligation of confidentiality with respect to any Confidential Information of the disclosing party that:

- a. Was already in the receiving party's possession on a non-confidential basis prior to receipt from the disclosing party; or
- b. Is in the public domain by public use, general knowledge or the like, or after disclosure hereunder, becomes general or public knowledge through no fault of the receiving party; or
- c. Is properly obtained by the receiving party from a third party not under a confidentiality obligation to the disclosing party; or
- d. Is explicitly approved for release by written authorization of the disclosing party; or
- e. Is independently developed by employees or agents of the receiving party who had no knowledge of or access to the Confidential Information as evidenced by the receiving party's business records; or
- f. Is required to be disclosed by operation of law, regulation, or an order of a court or other governmental authority of competent jurisdiction.

Receiving party shall notify disclosing party promptly of making a determination that any Confidential Information falls within subcategory (a), (b), (c), (e) or (f) above and will cooperate with the disclosing party's efforts to contest or limit the scope of any disclosure required by subsection (f).

No license, express or implied, in Confidential Information provided by the disclosing party is granted to the receiving party other than to the extent authorized by this Agreement. *See Attachment B*

- 16.2. **Protected Health Information:** Protected health information⁶ (PHI) is not intended to be shared under this Agreement unless a Business Associate Agreement (BAA) is executed as a part of this Agreement.

Second Party agrees that it will not receive or share protected health information under this Agreement unless the box below is checked and the Second Party has executed a Business Associate Agreement (BAA) acceptable to the First Party.

PHI may be shared. Check if applicable, and if so, initial _____ [Second Party Initial]. As protected health information may be shared, the Second Party agrees either (1) to execute a BAA⁷ acceptable to First Party before receiving any PHI or (2) operate under a plan approved by the First Party's Privacy Office for receiving only fully deidentified health information.

- 16.3 **Personal Information:** To the extent Second Party receives Personal Information⁸ as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931-934 (the "Act"), Second Party shall secure and protect the Personal Information by, without limitation: (i) complying with all requirements applicable to non-affiliated third parties⁹ set forth in the Act; (ii) utilizing security and breach investigation procedures that are appropriate to the nature of the Personal Information disclosed, at least as stringent as First Party's and reasonably designed to protect the Personal

⁶ See <http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveridentities/De-identification/guidance.html#protected>

⁷ See <http://louisville.edu/privacy/business-associates> for copy of First Party's BAA.

⁸ "Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

- a) An account, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
- b) A Social Security number;
- c) A taxpayer identification number that incorporates a Social Security number;
- d) A driver's license number, state identification card number or other individual identification number issued by an agency;
- e) A passport number or other identification number issued by the United States government; or
- f) Individually Identifiable Information as defined in 45 C.F.R. sec. 160.103 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g."

⁹ Per KRS 61.931(5), a "non-affiliated third party" means "any person or entity that has a contract or agreement with the Commonwealth and receives (accesses, collects or maintains) personal information from the Commonwealth pursuant to the contract or agreement."

Information from unauthorized access, use, modification, disclosure, manipulation, or destruction or that meet industry standard practices for protecting Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction; (iii) notifying First Party of a security breach as specified at <http://louisville.edu/security/incident-reporting-and-response/vendor-external-party-incident-reporting/> relating to Personal Information in the possession of Second Party or its agents or subcontractors within seventy-two (72) hours of discovery of an actual or suspected breach unless the exception set forth in KRS 61.932(2)(b)2 applies and Second Party abides by the requirements set forth in that exception; (iv) paying all costs of notification, investigation and mitigation in the event of a security breach of Personal Information caused by the actions or inactions of Second Party ("NIM Costs"); (v) cooperate with First Party in complying with the response, mitigation, correction, investigation and notification requirements of the Act including undertaking a prompt and reasonable investigation of any security breach; and (vi) at First Party's discretion and direction, handling all administrative functions associated with notification, investigation and mitigation, in accordance with the Act's requirements. The Second Party hereby agrees that the First Party may withhold payment(s) owed to the Second Party for any violation of these identity theft prevention reporting requirements or failure to pay NIM Costs.

17. **ELIGIBILITY TO PARTICIPATE IN GOVERNMENTAL PROGRAMS CERTIFICATION:** Second Party certifies that the Second Party, and where applicable any subcontract issued by Second Party, or any person performing services under this Agreement (i) is not now nor have ever been excluded, suspended, debarred or otherwise deemed ineligible to participate in governmental healthcare, procurement, or other programs; (ii) is not now nor have ever been charged with or been convicted of a criminal offense related to the provision of government healthcare, procurement, or other programs and have not been reinstated in such programs after a period of exclusion, suspension, debarment, or ineligibility. If the Second Party, and where applicable any subcontract issued by Second Party, or any person performing services under this Agreement becomes ineligible for participation in such governmental programs in the future, Second Party will have a process in place such that any vendor(s) issued a subcontract by Second Party and any person performing services under this Agreement will promptly notify the Second Party of such ineligibility. The Second Party will notify the University Department of Purchasing Office within seventy-two (72) hours of the Second Party becoming aware of the governmental ineligibility of the Second Party, any subcontract vendor issued a subcontract by Second Party, or any person performing services under this Agreement.
18. **ENTIRE UNDERSTANDING:** This Agreement represents the entire understanding and agreement between the parties relating to the services and supersedes all prior negotiations and agreements relative thereto. The language in all parts of this agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either University or Second Party. No provision of this agreement may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest.
19. **AUTHORITY TO CONTRACT:** Second Party and the principal signing on its behalf, certifies that it is validly organized with authority to do business and perform the terms hereunder, is qualified to do business in KY, if applicable, and is not prohibited from entering into or performing the terms of this agreement for any reason.
20. **COUNTERPARTS AND EXECUTION:** This Agreement may be executed in counterparts, each of which shall be deemed an original instrument, and all of which shall constitute a single agreement. The parties may execute this Agreement by facsimile, scanned PDF or other electronically transmitted signature, and such facsimile, scanned PDF or other electronically transmitted document, including the signatures thereon, shall be treated in all respects as an original instrument bearing an original signature.

[Signature Page follows:] *See Attachment B for 21.A. + 21.B.*

RECOMMENDED BY:

Chair/Department Head

Signature confirms that funds are available to cover the cost of these services

Printed Name

Date

UNIVERSITY OF LOUISVILLE

FIRST PARTY:

Associate VP for Business Services

Printed Name

Date

REVIEWED AS TO FORM & LEGALITY:

Attorney, University of Louisville

Printed Name

Date

SECOND PARTY:

Signature & Title

Printed Name

Date

RECOMMENDED BY:

Purchasing Officer or Authorized Representative

Printed Name

Date

NOTE:

Second Party may not begin work until contract has been received by the Legislative Research Commission. Receipt of a University of Louisville fully executed Personal Services contract will be the department's notification that payment may be made.

5/13/16

Dept. Name <u>SVP Finance & Administration</u>
Dept. Contact <u>Harlan Sands</u>
Dept. Phone <u>502-852-5114</u>

Attachment A
Forensic Investigation
Scope of Services

- I. The forensic investigation shall include procedures over the following:**
- A. Annual internal audit plans and a list of all internal audits, examinations, or reviews of the Foundation initiated or completed during the examination period.
 - B. Audited financial statement reports and audit management letters.
 - C. Financial transactions with focus on activities of related entities and real estate business practices, charitable donations (source and nature), and direct university support.
 - D. Financial trend analysis and related investment performance of cash and non-cash investments.
 - E. Existing Foundation by-laws/policies/procedures on executing financial/budget plan and procuring services, including assessment of whether those policies and procedures were followed.
 - F. Internal controls, including but not limited to approval/signature authority and segregation of duties for financial transactions, agreements with the University, external partners, and internal Related Entities.
 - G. Payments from the Foundation, by funding source (restricted or unrestricted), made to the University or other University affiliated organizations.
 - H. Contracts or other agreements between Foundation and members of the University board, the Foundation board, administration, or senior management.
 - I. Contracts or other agreements with current or past University employees paid fully or partially by Foundation.
 - J. Review of all contracts above \$100,000 which were not included in the competitive bid process.
 - K. Compensation packages of all University employees who are employed or whose compensation packages are supplemented by Foundation.
 - L. Financial disclosure statements for all Foundation board members, or any staff members, as required.
 - M. Total annual payments made by Foundation to vendors and any relationships.
 - N. Capital investments (real estate, e.g.) held by Foundation including leased properties or those properties used by the University or outside organizations.
 - O. All Foundation policies, procedures, and other related documents governing the following areas:
 1. Financial investment
 2. Execution of financial/budget plan
 3. Procurement
 4. Segregation of duties/internal controls between Foundation and University officials/staff
 5. Gifts
 6. Use of restricted funds
 7. Political and charitable contributions
 8. Donations to organizations
 9. Conflicts of interest, financial or ownership interest disclosures
 10. Nepotism
 11. Ethics

II. Deliverables:

The forensic investigation shall consist of an analysis of the above items and shall be conducted in accordance with the standards set forth by the AICPA Statement on Standards for Consulting Services and shall include procedures and findings surrounding internal accounting controls to assess financial reporting fraud risk and the safeguarding of assets. The Consultant shall present a report detailing identified deviations from policies in the financial operations and management of the Foundation.

- The Consultant shall assess fraud risk separately from the assessment of (unintentional) errors.
- The Consultant shall make recommendations as to the implementation of internal control procedures that will reduce risk.
- The work shall be presented to the "Audit Oversight Committee" and subsequently to the Board of Trustees and the U of L Foundation Board.
- No part of the work, except for printing may be subcontracted.

- University Foundation records shall be analyzed at a U of L approved location. All records shall be returned to the office from which the material was provided.

III. Required Reports:

Comprehensive Forensic Report

- one (1) Master unbound is required and
- Twenty-three (23) bound copies
- 1 CD Copy

The Forensic Report will be addressed to the University of Louisville, SVP Finance & Administration and shall make known the following:

- an assessment of certain internal accounting controls;
- an assessment of financial reporting fraud risk and the safeguarding of assets; and
- recommendations as to the implementation of controls that will reduce risk.

IV. Forensic Accountant Team and work plan:

Project Lead – is expected to average one day per week during the project duration

Team Members – will be fully committed to the project 4 to 5 days per week based on availability of information and U of L personnel

V. Timeline, method and approach:

A&M proposes a phased approach to this Engagement to manage fees and expenses and complete an independent forensic investigation of the U of L Foundation. Phase I consists of information gathering, data preservation, scope assessment, and planning of the subsequent phases. During Phase II we will perform analytics, testing and other investigative procedures, as well as conduct investigatory interviews and recover/review data based on any issues identified during Phase I. During Phase III we will document our procedures and findings, prepare a report, and present our findings.

During the first two weeks A&M will review documents and interview U of L Foundation personnel to assess the size and scope of the engagement, as well as an estimated timeline for the engagement. A&M will present its scope and timeline proposal to the Audit and Oversight Committee. Additionally, throughout the course of the engagement, A&M will provide weekly or bi-weekly updates to the Committee's designee(s) as to our findings and scope of the next phases of the engagement as applicable.

Phase I: Policy Review, Audit Review, Interviews and Data Preservation

Phase I begins with an in-depth review of the U of L Foundation's financial statements and policies and procedures in order to obtain a thorough understanding of the U of L Foundation's operations. A&M will review policies and procedures in place during the Review Period, and investigate any deviations from mandated policies and procedures. A&M will also interview the employees responsible for developing and executing the policies and procedures. To ensure the interviews are effective and efficient, we will request and review all available written documentation prior to the interviews. A&M works to minimize costs by leveraging pre-existing audits. A&M will work with the U of L Foundation's internal and external auditors (as available) to understand audit procedures performed during the Review Period.

Our Forensic Accountants and Forensic Technology Specialists will operate simultaneously during Phase I to perform the following work steps:

Forensic Accountants:

- 1) Conduct initial on-site informational interviews to gain an understanding of the types of information available
- 2) Request specific documentation such as documented policies and procedures, external audits, internal audits and audit workpapers, by-laws, contracts, etc.
- 3) Review documents as they become available
- 4) Conduct additional informational interviews (of current and former employees, as well as external auditors and investment advisors)

Forensic Technology Specialists:

- 5) Conduct informational interviews with the U of L Foundation's information technology ("IT") staff to understand IT systems (e.g. email and accounting systems) utilized during the Review Period, back-up procedures, and hardware retention of former employees;
- 6) In conjunction with the forensic accounting team, identify custodians for email and/or hard-drive preservation.

Phase II: Perform Analytics, Testing, and Other Procedures

Based on the understanding we acquire during Phase I, we will apply analytical procedures, such as trend analyses, to analyze and identify potential accounting anomalies. Our analytical and testing procedures will cover (but not be limited to) disbursements to U of L and its affiliates, related party transactions, capital investments such as real estate transactions, vendor disbursements, and employee compensation (including U of L employees). During this phase, we will continuously evaluate the U of L Foundation's systems of internal controls and, when appropriate, identify opportunities for improvement.

In order to minimize costs and avoid performing unnecessary procedures we will continuously assess the scope of our work as the engagement progresses. We will perform those investigative procedures we deem necessary to address the areas of highest risk. We will report interim findings to the Audit and Oversight Committee (or the Committee's designee), so we can agree upon our scope of work and any redirection of work we deem appropriate. For example, if our Forensic Accountants identify disbursements to unknown vendors, we may recommend our Business Intelligence team perform vendor background checks to determine whether or not the vendor is owned by a U of L Foundation employee. To the extent our interim findings indicate any improprieties; we will restore the preserved data to a review platform and perform keyword searches to confirm our findings and develop all information available.

A&M's professionals will perform the following work steps during Phase II as deemed necessary:

- 1) Perform analytical procedures on the financial statements to identify accounting anomalies
- 2) Sample and test disbursements including disbursements to U of L, third-party vendors, and employees (including but not limited to the following):
 - a. Review and compare approved operating and or capital budgets to actual disbursements to ensure in-line with policies and procedures
 - b. Review approved employee compensation packages and employee disclosures and compare to actual compensation paid
 - c. Ensure disbursements governed by contracts are in-line with the terms of an approved contract
- 3) Evaluate internal controls
- 4) Business intelligence procedures such as employee or vendor background checks, as deemed necessary
- 5) Data restoration and keyword search, as deemed necessary

Phase III: Prepare Report and Present Findings

During Phase III, A&M will draft a report detailing the procedures performed during the forensic investigation and our findings. A&M's report will include an evaluation of the U of L Foundation's internal accounting controls, specifically an assessment of the U of L Foundation's controls over revenue, expenditures, assets, and liabilities. Additionally, A&M's report will identify any deviations from best practices, separating fraud risk from unintentional errors. Finally, A&M will identify and make recommendations for areas of improvement.

A&M will present its findings to the Audit Oversight Committee, the Board of Trustees, and the U of L Foundation Board, as well as any other group with which U of L requests we share our findings.

Attachment B

Revisions to Terms and Conditions

3(B) INVOICING

Add: Receipts will be submitted upon request.

7. CANCELLATION

Either party shall have the right to terminate and cancel this agreement at any time upon thirty (30) days' written notice served on the other party by registered or certified mail or other delivery service providing verification of receipt (e.g. UPS, FedEx). In the event of any such termination, any undisputed fees and expenses incurred by the Second Party up until the time of termination shall be remitted as prescribed under Section 2(A).

9. CONFLICT-OF-INTEREST LAWS AND PRINCIPLES

Second Party's certification to the provisions of Section 9 that relate to the immediate family members of Second Party employees are limited to Second Party employees who are providing services to First Party under this Agreement.

Add the following to the end of section:

The Second Party has performed an internal search for any potential conflicts based upon the names of the parties that the First Party has provided who have an interest in the subject matter of the investigation. Nothing has come to the Second Party's attention that, in its judgment, would impair its ability to objectively perform the Services. The First Party agrees that it will inform the Second Party promptly of additional parties with an interest in the investigation or of name changes from those parties whose names were provided. Because the Second Party is an international consulting firm, it is possible that the Second Party may have rendered or will render services to or have associations with other entities or people which had or may have some connection with the investigation. The Second Party will not represent the interests of any such entities or people in connection with the investigation without the First Party's prior written consent.

The Second Party will not be prevented or restricted by this engagement from providing services in matters unrelated to the investigation, and the First Party shall be requested to waive any conflict of interest that may arise in connection with any such other engagement, which request shall not be unreasonably denied.

12. OWNERSHIP OF INTELLECUTAL PROPERTY:

Second Party agrees that except for Consultant Know-How, as defined below, any and all inventions, improvements, modifications, discoveries, information, data and materials (hereinafter collectively "Intellectual Property"), which are conceived, invented, authored, developed and/or reduced to practice in the performance of this agreement, are the sole property of the University of Louisville Research Foundation, Inc., a Kentucky non-profit corporation as the agent of the First Party for receiving grants and research agreements from external funding sources and which owns and controls intellectual property on behalf of UofL ("ULRF"), and the Second Party agrees to assign and does hereby assign to ULRF all rights, title, and interest in such Intellectual Property. Intellectual Property for which a copyright could be registered, including but not limited to software, computer programs, databases, web pages and documentation, and/or source code, (collectively, "Works") developed by Second Party for First Party, shall be considered "work for hire" such that ULRF, not Second Party, shall have full and complete ownership of all Works developed. Second Party shall provide such Works to First Party when completed, but no later than at the termination or expiration of this Agreement. To the extent that any Works may not, by operation of law, be a work made for hire in accordance with the terms of this Agreement, Second Party hereby assigns to ULRF all right, title, and interest in and to any copyright covering such Works, and ULRF shall have the right to obtain and hold in its own name any copyrights, registrations, or other proprietary rights that may be available. Second Party agrees to safeguard and keep confidential said Intellectual Property and all information (including records and dates) acquired from any source or developed by it in the performance of this Agreement. These conditions shall survive this Agreement.

These conditions shall survive this Agreement. Notwithstanding anything to the contrary herein, the parties expressly agree the Second Party will retain ownership of all of its Consultant Know-How. For purposes of this Agreement, Consultant Know-How means all of Second Party's (i) pre-existing intellectual property it developed prior to beginning work under this Agreement and all intellectual property it develops independent of this Agreement, (ii) residual knowledge, skills or experience including its knowledge of business principles, and those general analytical concepts, approaches, methodologies, models, processes, discoveries, ideas and formats which it develops, makes, supplies or conceives either solely or jointly during the course of its work under this Agreement. Second Party shall be free to use Consultant Know-How in other engagements so long as it acquires and applies such Consultant Know-How in a manner which does not violate any of its confidentiality obligations herein.

14. BILLING SERVICES: Audits:

Add the following to the end of the last sentence of the section:

so long as (i) auditor is not compensated on a contingent basis and (ii) the results of the audit were not subject to a good faith dispute by the Second Party.

15. INDEMNIFICATION:

Add the following to the end of the section:

To the extent permitted by Kentucky law, the First Party agrees to hold harmless and indemnify A&M and its affiliates (including their officers, partners, principals, members, managers, employees, and agents) against all claims, damages, and costs (including reasonable attorney's fees and disbursements) arising out of this Agreement or the services, except for such claims, damages and costs resulting from any actions by A&M constituting fraud or willful misconduct.

Limitation on Liability: In no event shall the Second Party, its affiliates, and its partners, principals and personnel be liable to the First Party, whether a claim be in tort, contract or otherwise, for any amount in excess of two-and-a-half (2½) times the maximum amount for fees and expenses as set forth in Section 2 (D) of the agreement unless the damages were primarily and directly from the fraud or willful misconduct of the Second Party relating to such services. In no event shall the Second Party or its personnel be liable for any consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense relating to this engagement (including, without limitation, loss of profit, data, business or goodwill or similar damages) even if advised of the possibility of such damages. In no event shall the Second Party be responsible for damages to computers or electronic media of any type, including tapes, CDs, DVDs, or hard drives, etc.

16.1 General Confidentiality:

Add the following to the end of the subsection:

If any person or entity requests or subpoenas any information or materials relating to the investigation, the Second Party will inform the First Party of such request or subpoena. The First Party agrees to reimburse the Second Party for any time and expenses, other than internal fees, directly incurred in responding to the request or subpoena.

Add the following new section:

16.3 Personal Information.

Second Party's liability under Section 16.3 is limited to three (3) times the maximum amount for fees and expenses as set forth in Section 2 (D) of the agreement unless the damages were primarily and directly from the fraud or willful misconduct of the Second Party relating to such services.

21.A. Relationship of the Parties and Regulatory Body Standards:

The parties intend that an independent contractor relationship will be created by this engagement letter. Unless otherwise agreed in writing, the Second Party shall be entitled to rely on information provided by the First Party without any duty on the part of the Second Party to independently verify the accuracy of such information. The Second Party will comply with applicable professional standards. Further, the Engagement shall not constitute an audit, review, or compilation that is subject to the rules of the AICPA, SEC or the PCAOB, or other state, national, or international professional or regulatory bodies. Second Party is subject to the standards set forth by the AICPA statement on Standards for Consulting Services.

21.B. No Third Party Beneficiary:

The First Party agrees that, without the Second Party's prior written permission, there are no third party beneficiaries. Absent the consent of the Second Party or as required by law or court order, no Second Party work product (written or oral) generate in connection with this engagement shall be made public, including by filing with any court.

University of Louisville

SUPPLIER CERTIFICATION

The following certifications and acknowledgements are applicable as indicated by the particular provision.

The term "Supplier," as used in this document, refers to the entity that is supplying the goods or services to the University of Louisville or one of its affiliated corporations. In related documents, the entity may also be referred to as Bidder, Offeror, Applicant, Proposer, Seller, Second Party, Subcontractor or other similar term.

The term "Contract", as used in this document, refers to the agreement, purchase order, memorandum of understanding, subcontract, subaward, personal services agreement/contract or other similar document specifying the provisions under which the Supplier is providing goods or services to the University of Louisville or one of its affiliated corporations.

The term "UofL affiliated entity" refers to the University of Louisville, the University of Louisville Research Foundation, Inc. , the University of Louisville Athletic Association, or the University of Louisville Foundation.

1. EQUAL OPPORTUNITY CLAUSE

(Applicable to Suppliers exceeding \$10,000 in Contracts with a UofL affiliated entity in a twelve month period)

This Contract is subject to the requirements of Executive Orders 11246 and 11375 and the rules and regulations of the U.S. Secretary of Labor (41 CFR Chapter 60) in promoting Equal Opportunities.

During the performance of this Contract the Supplier agrees as follows:

- a. Supplier will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. Supplier will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship. Supplier agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this nondiscrimination clause.
- b. Supplier will, in all solicitations or advertisements for employees placed by or on behalf of the Supplier, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.
- c. Supplier will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of Supplier's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. Supplier will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders.
- e. Supplier will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders, or pursuant thereto, and will permit access to

his books, records, and accounts by the contracting agency and the Affirmative Action Office for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- f. In the event of Supplier's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part, and Supplier may be declared ineligible for further Government contracts in accordance with the procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- g. Supplier will include the provisions of Paragraphs (a) through (g) in every subcontract or purchase order unless exempted by the rules, regulations, or orders issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provision will be binding upon each subcontractor or vendor. Supplier will take such action with respect to any subcontract or purchase order as the Government or Buyer may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event Supplier becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, Supplier may request the United States to enter into such litigation to protect the interests of the United States.¹

2. AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

(Applicable to Suppliers exceeding \$10,000 in Contracts with a UofL affiliated entity)

This Contract is subject to the requirements of Executive Order 11701 and the regulations of the U.S. Secretary of Labor (41 CFR Chapter 60, Part 60-250) in promoting employment opportunities for disabled and Vietnam veterans.

During the performance of this contract or purchase order, Supplier agrees as follows:

- a. To provide special emphasis to the employment of qualified disabled veterans and veterans of the Vietnam era. The Supplier also agrees that all suitable employment openings of the Supplier which exist at the time of execution of this Contract and those which occur during the performance of this Contract, including those not generated by this Contract and including those occurring at an establishment of the Supplier other than the one wherein the Contract is being performed but excluding those of independently operated corporate affiliates, shall be offered for listing at an appropriate local office of the State Employment Service system wherein the opening occurs and to provide such reports to such local office regarding employment openings and hires as may be required: provided, that if the Contract or purchase order is for less than \$10,000 or if it is with a state or local government, the reports set forth in Paragraphs (c) and (d) of this clause are not required.
- b. Listing of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment service or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of any particular job applicant or from any particular group of job applicants, and nothing herein is intended to relieve the Supplier from any requirements in Executive Order or regulations regarding nondiscrimination in employment.

¹ For federally-assisted construction contracts, the Supplier further agrees that it shall comply with the requirements of 41 CFR 60-1.4(b), which is specifically incorporated by reference herein.

- c. The reports required by Paragraph (a) of this clause shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or where the Supplier has more than one establishment in a state, with the central office of the state employment service. Such reports shall indicate for each establishment (1) the number of individuals who were hired during the reporting period; (2) the number of those hired who were disabled veterans; and (3) the number who were nondisabled veterans of the Vietnam era.
- d. The Supplier shall submit a report within 30 days after the end of each reporting period wherein any performance is made on this contract or purchase order. The Supplier shall maintain copies of the reports submitted until the expiration of one year after final payment under the Contract, during which time they shall be made available, upon request, for examination by any authorized representatives of the contracting officer or of the University's Affirmative Action Office.
- e. Whenever the Supplier becomes contractually bound to the listing provisions of this clause, he shall advise the employment service system in each state wherein he has establishments of the name and location of each such establishment in the state. As long as the Supplier is contractually bound to these provisions and has so advised the state system, there is no need to advise the state system of subsequent contracts or purchase orders. The Supplier may advise the state system when it is no longer bound by this contract clause.
- f. This clause does not apply to the listing of employment openings which occur and are filled outside of the 50 states, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.
- g. This clause does not apply to openings which the Supplier proposed to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of his own organization or employer-union arrangement for that opening.
- h. As used in this clause:
 - 1. "All suitable employment openings" includes, but is not limited to, openings which occur in the following job categories: production and nonproduction; plant and office; laborers and mechanics; supervisory and nonsupervisory; technical, and executive administrative, and professional openings which are compensated on a salary basis of less than \$18,000 per year. This term includes full-time employment, temporary employment of more than three days' duration, and part-time employment. It does not include openings which the Supplier proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement. Under the most compelling circumstances an employment opening may not be suitable for listing, including the situations where the needs of the Government cannot reasonably be otherwise supplied, where listing would be contrary to national security, or where the requirement of listing would otherwise not be for the best interest of the Government
 - 2. "Appropriate office of the state employment service system" means the local office of the federal-state national system or public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.
 - 3. "Openings which the Supplier proposes to fill from within his own organization" means employment openings for which no consideration will be given to persons outside the Supplier's organization (including any affiliates, subsidiaries, and the parent companies) and includes any openings which the Supplier proposes to fill from regularly established "recall" or "rehire" lists.

4. "Openings which the Supplier proposes to fill pursuant to a customary and traditional employer-union hiring arrangement" means employment openings for which no consideration will be given to persons outside of a special hiring arrangement, including openings which the Supplier proposes to fill from union halls, which is part of the customary and traditional hiring relationship which exists between the Supplier and representatives of his employees.
5. "Disabled veteran" means a person entitled to disability compensation under the law administered by the Veterans' Administration for disability rates at 30 per centum or more, or a person whose discharge or release from active duty was for a disability incurred or aggravated in line of duty.
6. "Veterans of the Vietnam era" means a person (1) who (i) served on active duty for a period of more than 180 days, any part of which occurred after August 05, 1964, and was discharged or released therefrom with other than a dishonorable discharge, or (ii) was discharged or released from active duty for service-connected disability if any part of such duty was performed after August 05, 1964, and (2) who was so discharged or released within the 48 months preceding his application for employment covered under this part.

3. CERTIFICATE OF NONSEGREGATED FACILITIES

(Applicable to Suppliers exceeding \$10,000 in Contracts with a UofL affiliated entity)

This Contract is subject to the requirements of Executive Order 11246 and the regulations of the U.S. Secretary of Labor (41 CFR Part 60-1.8) prohibiting segregated facilities based upon race, color, religion, sex or national origin.

The undersigned Supplier certifies to the University of Louisville and the Federal Government agencies with which it contracts that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit the employees to perform their services at any location under his control where segregated facilities are maintained. Supplier certifies further that he will not maintain or provide for his employment any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location under his control where segregated facilities are maintained. The undersigned bidder, offerer, applicant, supplier, or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time period) he will obtain identical certifications from proposed subcontractors prior to the award of subcontractors exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, that he will retain such certification in his files, and that he will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certification for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES

A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provision of the Equal Opportunity Clause. The

Certification may be submitted either for each subcontract or for all subcontracts or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

4. EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES

(Applicable to Suppliers exceeding \$10,000 in Contracts with a UofL affiliated entity)

This Contract is subject to the requirements of Executive Order 11758, section 503 of the Rehabilitation Act of 1973, as amended, and the regulations of the U.S. Secretary of Labor (41 CFR Part 60-741.5) to promote the employment and advancement of qualified handicapped individuals.

During the performance of this Contract, Supplier agrees as follows:

a. that it will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based on their physical or mental disability in all employment practices, including the following:

- i. Recruitment, advertising, and job application procedures;
- ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
- iii. Rates of pay or any other form of compensation and changes in compensation;
- iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- v. Leaves of absence, sick leave, or any other leave;
- vi. Fringe benefits available by virtue of employment, whether or not administered by the contractor;
- vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- viii. Activities sponsored by the contractor including social or recreational programs; and
- ix. Any other term, condition, or privilege of employment.

b. that it will comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

c. that in the event of noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

d. that it will post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The contractor must ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair).

e. that it will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of

section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment individuals with physical or mental disabilities.

f. that it will include the provisions of this clause in every subcontract or purchase order in excess of \$10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Deputy Assistant Secretary for Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

5. AFFIRMATIVE ACTION PROGRAM REQUIREMENT

(Applicable to Suppliers employing 50 or more employees and exceeding \$50,000 in Contracts with a UofL affiliated entity)

This Contract is subject to the requirements of Executive Order 11758, section 503 of the Rehabilitation Act of 1973, as amended, and the regulations of the U.S. Secretary of Labor (41 CFR Part 60-741.40) in promoting affirmative action in Employment of the Handicapped. Supplier agrees to conform to its requirements as outlined in 41 CFR Part 60-741.44.

Furthermore, Supplier agrees to develop a written Affirmative Action Compliance Program for each of its establishments as required by 41 CFR 60-2.1.

6. FILING CERTIFICATE

(Applicable to Suppliers employing 50 or more employees and exceeding \$50,000 in Contracts with a UofL affiliated entity)

Supplier has filed or will file the necessary compliance reports, including Standard Form 100 (EEO-1) where and when required by law and applicable regulations, including, without limitation, the Civil Rights Act of 1964 as amended by the Equal Employment Opportunity Act of 1972 and regulations in 41 CFR 60-1.7. Supplier further agrees that it shall require similar certification and filing from its nonexempt subcontractors and suppliers. The Supplier agrees to submit a copy of his Affirmative Action Program to the Affirmative Action Office, University of Louisville, within 30 days after the award to him of a Contract. Subsequent reports shall be submitted annually in accordance with 41 CFR 60-1.7(a)(1).

7. AFFIRMATIVE ACTION CERTIFICATE

(Applicable to Suppliers employing 50 or more employees and exceeding \$50,000 in Contracts with a UofL affiliated entity)

Supplier has developed, is maintaining, and will continue to maintain the written affirmative action compliance program to guarantee equal employment opportunity to minority groups required by applicable laws and regulations, including, without limitations, those appearing in 41 CFR 60-1.40. Supplier further agrees that it shall require similar certification and filing from its nonexempt subcontractors and suppliers.²

² Nonconstruction contractors should refer to 41 CFR Part 60-2 for specific affirmative action requirements. Construction contractors should refer to 41 CFR Part 60-4 for specific affirmative action requirements.

8. ADMINISTRATIVE, CONTRACTUAL, LEGAL REMEDIES

(Applicable to federally funded Contracts exceeding \$150,000 [or a higher threshold if the \$150,000 is adjusted for inflation as determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council])

Supplier acknowledges that the applicable UofL affiliated entity may impose sanctions or penalties on the Supplier for violation of terms of the Contract or breach of contract including violation of applicable regulations, other applicable provisions of law, or any directive or instruction from the UofL affiliated entity or the federal entity providing the funding. The UofL affiliated entity will determine the appropriate sanction and/or penalty, up to and including the inability to provide future goods or services to any UofL affiliated entity. In determining the appropriate sanction and/or penalty, the UofL affiliated entity will consider previous violations, potential harm to the project for which the goods or services are being provided, and any other relevant factors. The Supplier will be notified in writing of the intent to sanction and/or penalize and will have 10 business days from the date of receipt of the notice to submit a written response. The response will be reviewed and a final decision will be communicated in writing to the Supplier. These sanctions or penalties do not preclude the UofL affiliated entity, nor the Supplier, from pursuing any other alternate dispute resolution or legal remedy to which either may be entitled under law or regulation.

9. DAVIS BACON ACT

(Applicable to federally funded construction projects exceeding \$2,000)

Supplier agrees to pay wages to mechanics and laborers at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Supplier agrees to pay wages and meet the other requirements as specified by Davis-Bacon Act, as amended (40 U.S.C. 3141-3148) as supplemented by the Department of Labor regulations (29 CFR Part 5). Supplier acknowledges that the UofL affiliated entity's decision to make a Contract with Supplier is conditioned upon the acceptance of the wage determination.

10. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

(Applicable to federally funded Contracts exceeding \$100,000 which involves the employment of mechanics and laborers)

Supplier agrees to pay salaries and wages in accordance with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) as supplemented by Department of Labor regulations (29 CFR part 5.) Supplier acknowledges that such requirements include computation of wages of a standard work week of 40 hours for every mechanic and laborer and that work in excess of the standard work week is permissible provided the worker is compensated at a rate no less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. These requirements do not apply to purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

11. CLEAN AIR AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to federally funded Contracts exceeding \$150,000)

Supplier agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33

U.S.C. 1251-1387). Supplier acknowledges the requirement to report any violations with the funding Federal agency and to the Regional Office of the Environmental Protection Agency (EPA) and agrees to notify the UofL affiliated entity of any such violations.

12. TERMINATION

(Applicable to federally funded Contracts exceeding \$10,000)

The UofL affiliated entity shall have the right to terminate/cancel this Contract at any time upon thirty (30) days' written notice to the Supplier. The UofL affiliated entity shall pay Supplier for termination costs as allowable under OMB Circular A-21 or 2 CFR Part 200 as applicable.

13. LOBBYING/ANTI-KICK BACK

Copeland Anti-Kick Back Act:

(Applicable to any federally funded Contracts or funded by a federal loan)

The Supplier agrees to comply with the Copeland "Anti-Kick Back" Act (18 USC 874) as supplemented in the Department of Labor Regulations (29 CFR, Part 3). This Act provides that each Supplier, Bidder, subcontractor or subgrantee is prohibited from inducing, by any means, any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States to give up any part of the compensation to which he is otherwise entitled.

Certification Governing Lobbying:

(Applicable to federally funded Contracts exceeding \$100,000)

The Supplier certifies to the best of his/her knowledge and belief that:

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Supplier, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, , the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or intending to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Supplier shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying", to the UofL affiliated entity.
- 3) The Supplier shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

14. ACCESS TO RECORDS

(Applicable to any federally funded Contracts)

The UofL affiliated entity reserves the right to inspect, upon reasonable advance notice by the UofL affiliated entity and during normal business hours, Supplier's physical facilities, and all books, records, and documents of any kind pertaining to this Contract or Supplier's performance of supplying the goods or services provided by this Contract. Supplier agrees to provide copies of any records, receipts, accounts or other documentation to the UofL affiliated entity in a timely fashion as reasonably requested by the UofL affiliated entity. Supplier will keep all usual and proper records and books of accounts in accordance with Generally Accepted Accounting Principles (GAAP) relating to performance of the Contract for a minimum period of three (3) years after the date of receipt of the final payment.

15. AUDITS

(Applicable to any federally funded Contracts)

Supplier assures UofL affiliated entity that it complies with either A-133 or the applicable provisions of 2 CFR Part F Audit Requirements (§200.500-200.520) applicable to assurances from subawards/subcontracts and that it will notify the UofL affiliated entity of completion of required audits and of any adverse findings which impact this Agreement, including those required audits conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS). The UofL affiliated entity reserves the right to inspect, upon reasonable advance notice and during normal business hours, Supplier's physical facilities used to provide the Services undertaken under this Agreement, and all books, records, and documents of any kind pertaining to the provision of the Services provided under this Agreement. Supplier agrees to provide copies of any records, receipts, accounts or other documentation in a timely fashion as reasonably requested by the UofL affiliated entity. Supplier will keep all usual and proper records and books of accounts in accordance with Generally Accepted Accounting Principles (GAAP) relating to performance/provision of Services for a minimum period of three (3) years after the date of receipt of the final payment.

This Supplier Certification is hereby incorporated into the applicable Contract with you. Your signature on the Contract, acceptance of the Contract/purchase order, acceptance of payment, or other form of acceptance/acknowledgement (e.g. continuing business relationship) with a UofL affiliated entity indicates your agreement to and acceptance of the applicable provisions. No counter offer or provision of alternate terms and conditions is accepted by the UofL affiliated entity. Any changes must be agreed to in a signed separate writing specifically addressing the particular provision(s).