

## **6.0 AGREEMENT TERMS AND CONDITIONS**

The following are the Terms and Conditions that will become part of any Agreement consummated between the University and Perkin Elmer Health Sciences "Perkin Elmer" or "Vendor" and are not subject to negotiation or alteration by the Successful Vendor. This list of provisions is not exhaustive or indicative of every provision that will be contained in the Agreement, but rather identifies particular terms and conditions of which the vendor should be aware. In the event of a conflict between any provisions contained in any of the documents governing this transaction, the following shall be the order of precedence: MOU shall be first control, the Invitation to Negotiate, these University's General Terms and Conditions of Sale negotiated and agreed to by both parties, and finally the vendor bid response.

### **6.1 Actions of Successful Vendor**

The University is under no obligation whatsoever to be bound by the actions of any Successful Vendor with respect to third parties. The Successful Vendor is not a division or agent of the University.

### **6.2 Advertising**

The Successful Vendor shall not advertise or publish information concerning the Agreement without prior written consent of the University. The University shall not unreasonably withhold permission.

Direct marketing to UF e-mail addresses should be pre-approved by Purchasing Services with the majority of promotions being available through the MyUF Market electronic catalogs

### **6.3 Americans with Disabilities Act**

The Successful Vendor shall comply with all applicable provisions of the Americans with Disabilities Act and applicable federal regulations under the act.

### **6.4 Certification**

By signature on the "Proposal Certification" form included under Section 7.0, the Vendor certifies that the submission on the proposal did not involve collusion or other anti-competitive practices. The Vendor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted proposal. In addition, Vendor certifies whether or not an employee of the University has, or whose relative has, a substantial interest in any Agreement subsequent to this ITN. Vendor also certifies their status with regard to debarment, or suspension by any federal entity.

Failure to provide a valid signature affirming the stipulations required by this clause shall result in the rejection of the submitted proposal and, if applicable, any resulting Agreement. Signing the certification with a false statement shall void the proposal and, if applicable, any resulting Agreement. Any resulting Agreement may be subject to legal remedies provided by law. Vendor agrees to promote and offer to the University only those services and/or materials as stated in and allowed for under resulting Agreement(s).

### **6.5 Conflict of Interest**

The award hereunder is subject to the provisions of Chapter 112, F.S. Vendors must disclose with the proposal the name of any trustee, officer, director, or agent who is also an employee of the University of Florida. Further, all Vendors must disclose the name of any University employee who owns,

directly or indirectly, an interest of five percent (5%) or more in the Vendor's firm or any of its branches.

## **6.6 Discrimination**

An entity or affiliate who has been placed on the discriminatory list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit proposals on leases of real property to a public entity, may not award or perform work as a Vendor, supplier, subcontractor or consultant under contract with any public entity, and may not transact business with any public entity.

## **6.7 Drug Free Workplace**

The Successful Vendor agrees that in the performance of the Agreement, neither the Successful Vendor nor any employee of the Successful Vendor shall engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity covered by the Agreement. The University reserves the right to request a copy of the Successful Vendor's Drug Free Workplace Policy. The Successful Vendor further agrees to insert a provision similar to this statement in all subcontracts for services required.

## **6.8 Equal Opportunity Statement**

The State Universities have established equal opportunity practices which conform to both the spirit and the letter of all laws against discrimination and prohibit discrimination based on race, creed, color, sex, age, national origin, marital status or religion. To be considered for inclusion as a supplier under this agreement, the vendor commits to the following:

- A. The provisions of Executive Order 11246, September 24, 1966, and the rules, regulations, and relevant orders of the Secretary of Labor are applicable to each order placed against this agreement regardless of value.
- B. If the vendor expects to receive \$10,000 in orders during the first 12 months of this agreement, a complete certificate of non-segregated facilities shall be attached to the proposal response.
- C. If the vendor expects to receive \$50,000 in orders during the first 12 months of this agreement and employs more than 50 people, standard form 100 (EEO-1) must be filed prior to March 1 of each year.
- D. If the vendor expects to receive \$50,000 in orders during the first 12 months and employs more than 50 people, a written program for affirmative action compliance must be maintained by the vendor, subject to review upon request by the user agencies of this agreement.

If you have already complied with the above, please indicate \_\_\_\_\_

## **6.9 Federal, State, and Local Laws and Regulations**

Successful Vendor is solely responsible for complying with all laws, ordinances, and regulations including but not limited to, those relating to taxes, licenses and permits, as they may apply to any matter under this ITN. The Successful Vendor must demonstrate that they are duly licensed by applicable regulatory bodies during the performance of the Agreement. Prior to the commencement of Agreement, the Successful Vendor shall be prepared to provide evidence of such licensing as may be requested by the University. Successful Vendor shall, at no expense to the University, procure and keep in force during the entire period of the Agreement all such permits and licenses.

#### **6.10 Inspection, Audit and Reporting**

All performance related books, accounts, reports, files and other non-financial records relating to the Agreement shall be subject at all reasonable times to inspection and audit by the University of Florida.

Reporting Requirements: Upon request, the successful vendor(s) agrees to use commercially reasonable efforts to furnish to the University a summary of total sales made for all Colleges and department of University of Florida no more than twice a year.

All reporting will be in Electronic Format provided to Purchasing Services either prior to business review meetings or as requested.

Reports may include, but are not limited to the following.

Detailed invoice level purchase history usage with at minimum the following fields:

- PO Number
- Quote Number
- Invoice Number
- Invoice Date
- Ordered By Department
- Order Date
- Delivery Date
- Vendor Item Code
- Item Description
- List Price
- Order Method
- Discount
- Net Price

Vendor and University will work together to create reports as University deems necessary and compatible with vendor systems.

#### **6.11 Liens**

Each Successful Vendor shall keep the University free and clear from all liens asserted by any person or entity for any reason arising out of the furnishing of services or materials by or to the Successful Vendor which result from the acts or omissions of vendor.

#### **6.12 Modifications**

The Agreement can be modified or rescinded only by a writing signed by both parties or their duly authorized agents.

#### **6.13 Non-Discrimination**

The parties agree to be bound by applicable state and federal rules governing Equal Employment Opportunity and Non-Discrimination.

#### **6.14 Ownership of Documents**

All information, designs, data or engineering results delivered to the University hereunder which are generated for the first time by Vendor under the Contract solely and exclusively at the University's expense shall be considered the property of the University unless the parties in a separate written agreement executed by the parties designate them as work for hire and the property of interface. To the extent either party desires to review the ownership of any item delivered or created hereunder, the parties shall meet and confer in good faith.

#### **6.15 Sales and Use Tax**

The Successful Vendor agrees to comply with and to require all of his subcontractors to comply with all the provisions of applicable law. The Successful Vendor further agrees to indemnify and hold harmless the University from any and all claims and demands made against it by virtue of the failure of the Successful Vendor or any subcontractors to comply with the provisions of any and all said laws. The University is exempt from state sales and use tax.

#### **6.16 Sexual Harassment**

Federal law and the policies of the University prohibit sexual harassment of University employees or students. Sexual harassment includes any unwelcome sexual advance toward a University employee or student, any request for a sexual favor from a University employee or student, or any other verbal or physical conduct of a sexual nature that is so pervasive as to create a hostile or offensive working environment for University employees, or a hostile or an offensive academic environment for University students. University vendors, subcontractors and suppliers for this project are required to exercise control over their employees so as to prohibit acts of sexual harassment of University employees and students. The employer of any person who the University, in its reasonable judgment, determines has committed an act of sexual harassment agrees as a term and condition of the Agreement to cause such person to be removed from the project site and from University premises and to take such other action as may be reasonably necessary to cause the sexual harassment to cease.

#### **6.17 Small Business Program**

University is an equal opportunity institution and, as such, encourages the use of small businesses, including women and minority-owned small businesses in the provision of goods and services. Small businesses should have a fair and equal opportunity to compete for dollars spent by the University. Competition ensures that prices are competitive and a broad vendor base is available. Vendor shall use good faith efforts to ensure opportunities are available to small businesses, including women and minority-owned businesses. UF requests that data regarding the use of Tier 2 vendors be provided on request. For questions about the University's Small Business Program contact Faylene Welcome, Director of Small Business and Vendor Diversity, 352-392-0380.

#### **6.18 Tobacco Free Campus Policy**

The University of Florida campus is a tobacco-free campus. This policy was effective as of July 1, 2010. The use of cigarettes or other tobacco products in UF buildings, parking lots, or in vehicles in these areas is prohibited. The successful vendor is expected to respect this smoke free policy and fully comply with it.

#### **6.19 Sustainability Preferences**

The University's purchasing directives support the purchase of products that will minimize any negative environmental impacts of our work. In order to facilitate a healthy market in sustainable products, all parties involved in the procurement and utilization of materials must engage in both waste recycling and the initial purchase of products containing recycled content. It is in the interest of public health, safety and welfare and the conservation of energy and natural resources to use and promote environmentally responsible products, as well as energy efficient fixtures, appliances and mechanical equipment used in new construction and retrofit of University facilities.

#### **6.20 Assignment-Delegation**

No right or interest in the Agreement shall be assigned or delegation of any obligation made by Successful Vendor without written permission of the University. Any attempted assignment or delegation by Successful Vendor shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

#### **6.21 Assignment of Anti-Trust Overcharge Claims**

The parties recognize that in actual economic practice overcharges resulting from anti-trust violations are in fact borne by the ultimate purchaser; therefore, Successful Vendor hereby assigns to the University any and all claims for such overcharges.

#### **6.22 Date for Reckoning Prompt-Payment Discount**

For purposes of determining whether a prompt-payment discount, if applicable, may be taken by the University, the starting date of such reckoning period shall be the later of the date of a properly executed invoice or the date of completion of service and/or delivery of product.

#### **6.23 Force Majeure**

In the event compliance with any obligation under this Agreement is impractical or impossible due to any Event of Force Majeure, then the time for performance of such obligation shall be extended for a period equivalent to the duration of the Event of Force Majeure. The provisions of this section shall not operate to excuse either party's inability to perform its obligations hereunder because of inadequate finances. "Event of Force Majeure:" means any embargo, flood, earthquake, storm, dust storm, lightning, fire, epidemic, act of God, war, national emergency, civil disturbance or disobedience, riot, sabotage, terrorism, restraint by governmental order or any other occurrence beyond the reasonable control of the party in question.

#### **6.24 Furnish and Install**

The items specified in this solicitation will be provided and will be stated on the individual quotation whether it will be on a furnished and installed basis. The Successful Vendor shall have the complete responsibility for the items or system until it is delivered at destination noted on Purchase order. Any special installation preparation and requirements must be submitted to the University. All transportation and coordination arrangements will be the responsibility of the Successful Vendor. Delivery of equipment will be coordinated so that items or systems will be delivered directly to the docks of the installation site.

#### **6.25 Indemnification/Hold Harmless; Liability**

The Successful Vendor shall indemnify, defend, and hold harmless the University of Florida Board of Trustees, the University of Florida, the State of Florida and the Florida Board of Governors, and their respective officers, agents, and employees, against and from any and all claims, demands, suits, actions, proceedings, loss, cost, and damages of every kind and description, including reasonable attorneys' fees and/or litigation expenses, which may be brought or made against or incurred on account of loss of or damage to any property or for injuries to or death of any person, caused by, arising out of, or contributed to, in whole, by reasons of any negligent act, omission, professional error, fault, mistake, or willful misconduct of Successful Vendor, its employees, agents, representatives, or subcontractors, their employees, agents, or representatives in connection with the performance of the Agreement. Successful Vendor's obligation under this provision shall not extend to any liability caused by the negligence of the University Of Florida Board Of Trustees, University, or its officers, agents, and employees. Such indemnification shall specifically include infringement claims

made against any and all intellectual property supplied by Successful Vendor and third party infringement under the Agreement.

The University, as a public entity, is protected by sovereign immunity from tort liability, subject to a limited statutory waiver. The University will not agree to (i) indemnify or hold harmless any vendor; (ii) be liable for vendor's attorneys' fees under any circumstances; or (iii) binding arbitration. The Agreement shall not be construed or interpreted as (i) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (ii) the consent of University or the State of Florida or their agents and agencies to be sued; or (iii) a waiver of either University's or the State of Florida's sovereign immunity beyond the limited waiver provided in section 768.28, Florida Statutes.

## **6.26 Insurance Requirements**

The Successful Vendor shall purchase from and maintain with a company or companies, lawfully authorized to do business in Florida and acceptable to the University, such insurance as will protect the Successful Vendor from claims arising out of or resulting from the Successful Vendor's operations under the Agreement and for which the Successful Vendor may be legally liable, whether such operations be by the Successful Vendor or by their subcontractors or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. All insurance policies shall be issued and countersigned by representatives of such companies duly authorized for the State of Florida and shall be written on ISO standard forms or their equivalents. The Successful Vendor shall file with the University Certificates of Insurance prior to the commencement of this Agreement and shall file Certificates of Insurance evidencing the renewal of such policies at least thirty (30) days prior to the date that each applicable insurance policy is scheduled to expire. *Please note that the University of Florida must be named "additional insured" on automobile and general liability policies.*

General Liability Insurance – The Successful Vendor shall provide the ISO Commercial General Liability policy for general liability coverage's for limits of not less than of \$1,000,000 per occurrence. Coverage shall be maintained without interruption from date of commencement of work until date of final payment.

Worker's Compensation - The Successful Vendor shall secure and maintain for the life of this Agreement, valid Worker's Compensation Insurance as required by chapter 440, Florida Statutes.

Automobile Liability - The Successful Vendor shall secure and maintain, during the life of this Agreement, Automobile Liability insurance on all vehicles against bodily injury and property damage in at least the amount of \$100,000.00 per person, \$500,000.00 per occurrence.

## **6.27 Protection of Property**

The Successful Vendor shall at all times guard against damage or loss caused by the acts or omissions of Vendor to the property of the University or of others or vendors and shall be held responsible for replacing or repairing any such loss or damage. The University may withhold payment or make such deductions as deemed necessary to insure reimbursement or replacement for loss or damage to property through negligence of the Successful Vendor or their agents. The Successful Vendor shall provide all barricades and take all necessary precautions to protect buildings and personnel.

### Intellectual Property

- A. Ownership to such improvements, developments and inventions shall be and remain the property of Recipient unless and until the Parties in a separate agreement executed by the Parties designate them as Work for Hire and the property of Interface.

- B. Paragraph A does not apply to Works that are not created through performance under this Contract ("Pre-existing works"). With respect to Pre-existing works used by the Contractor in performance of this Contract, the Contractor shall obtain for the University at no additional charge a license to use Pre-existing works for the uses intended under this Contract, including the right to make derivative works. Paragraph A does apply, however, to any Works that are derivative of Pre-existing works.
- C. The Contractor warrants that it has full power and authority to transfer the rights granted by this Contract to the University.
- D. Title and all rights and privileges to all graphics and material provided to the Contractor by the University in connection with this Contract remain the exclusive property of the University of Florida. The Contractor does not receive any title, rights, or privileges in those graphics or materials. The University grants to the Contractor a limited license in those graphics or materials only for the purpose of carrying out the Contractor's obligations under this Contract.

#### **6.28 Labor Disputes**

Successful Vendor shall give prompt notice to the University of any actual or potential labor dispute which delays or may delay performance of the Agreement.

#### **6.29 Laws and Regulations**

Successful Vendors are solely responsible for keeping themselves fully informed of and faithfully observing all laws, ordinances, and regulations and shall protect and indemnify the University, its officers and agents against any claims of liability arising from or based on any violation thereof.

#### **6.30 No Replacement of Defective Tender**

Every tender of goods must fully comply with all provisions of the Agreement as to time of delivery, quantity, and the like. If a tender is made which does not fully conform, this shall constitute a breach and Successful Vendor shall not have the right to substitute a conforming tender.

#### **6.31 No Waiver of Right by the University**

No waiver by University of any breach of the provisions of the Agreement by the Successful Vendor shall in any way be construed to be a waiver of any future breach or bar the University's right to insist on strict performance of the provisions of the Agreement.

#### **6.32 Notice to Vendors of Asbestos-Containing Materials in University Buildings**

Asbestos containing materials (ACM) can be found in almost any building in the United States more than 10 years old. The University of Florida is no exception. The types of asbestos most commonly found are pipe and boiler insulation, fireproofing, hard panels known as "Transite", floor tile, and spray or trowel-applied ceiling finishes. ACM is generally not hazardous if left undisturbed.

The University has implemented an Asbestos Program to assure safe management and removal of ACM. Vendors, consultants, and others providing service to the University may encounter ACM and must, therefore, comply with the following instructions:

- A. Avoid disturbing suspected ACM. Exercise caution and watch for possible ACM.

B. If it is necessary to disturb ACM, first notify the appropriate Division Asbestos Representative listed in this notice, or the University of Florida Asbestos Coordinator, before proceeding with your work. You shall take whatever precautions are necessary to protect humans' health and the environment, and comply with all applicable Federal, State, and Local laws pertaining to asbestos.

C. If you require additional information on possible locations of ACM in a particular building, contact the Asbestos Representative from the Division for which you are working.

<u>Division</u>	<u>Asbestos Representative</u>	<u>Telephone</u>
Physical Plant	Assoc. Dir. Physical Plant	(352) 392-7793
Health Center	Asst. Dir. Health Ctr Physical Plant	(352) 392-4417
Housing	Housing Maintenance Superintendent	(352) 392-2161
Reitz Union	Maintenance Superintendent	(352) 392-1614
IFAS	Engineer	(352) 392-6488

#### **6.33 Parking and Identification Badges.**

The Successful Vendor shall obtain all parking permits and/or decals that may be required while performing project work on University premises. The Successful Vendor should review Contractor and Vendor Parking information from Transportation and Parking Services located at the following link: <http://www.parking.ufl.edu/pages/contractorvendordecal.asp>

#### **6.34 Payment and Processing Terms**

The University's obligation is payable only and solely from funds appropriated for the purpose of the Agreement. Unless otherwise stated herein, the payment terms for the Agreement are Net 30 days. VENDOR OMBUDSMAN: The University's vendor ombudsman whose duties include acting as an advocate for vendors may be experiencing problems in obtaining payment(s) from the University may be contacted at 352-392-1241.

All invoices for payment should be submitted to the University of Florida via:  
eMail:

eMail .pdf or .tif file to [ufl@invoices.corcentric.com](mailto:ufl@invoices.corcentric.com)

The file must be attached to the email and not embedded within the email.

There can be multiple files per email but each file should only contain one invoice.

#### **6.35 Discount Adjustment**

Pricing shall consist of a General discount of 3% off list price for all PerkinElmer catalog products categories guaranteed for the term of the contract however, the General Discount does not apply to any part numbers covering installations or trainings. The Reagent Pricing Agreement is applicable to all entities but the University Benefit Program Discounts are for Degree Granting Universities and institutions only. Items not included in this contract are NEO or DIA product lines. Pricing will be reviewed once a year for accuracy with current price list that renew annually. These are minimums offered at the discretion of Sales Management at PerkinElmer

#### **6.36 Prior Course of Dealings**

No trade usage, prior course of dealings, or course of performance under other agreements shall be a part of any agreement resulting from this ITN; nor shall such trade usage, prior course of dealing, or course of performance be used in the interpretation or construction of such resulting agreement.

#### **6.37 Intentionally Blank**



N/A

#### **6.38 Public Entity Crime**

A person or affiliate who has been placed on the convicted list by the Department of Management Services, State of Florida, may not submit a proposal on a contract to provide any goods or services, including construction, repairs, or leases and may not be awarded or perform work as a Vendor, supplier, subcontractor, or consultant for the University of Florida for a period of 36 months from the date of being placed on the convicted list, a "person" or "affiliate" includes any natural person or any entity, including predecessor or successor entities or any entity under the control of any natural person who is active in its management and who has been convicted of a public entity crime (Rule 6C1-3.020 FAC).

#### **6.39 Public Records**

All proposal information submitted and opened becomes subject to the Public Records Law set forth in Chapter 119 F.S.

Any resulting Agreement may be unilaterally canceled for refusal by the vendor to allow public access to all documents, papers, letters, or other materials made or received by the Successful Vendor in conjunction with the Agreement and subject to the provisions of Chapter 119. F.S.

#### **6.40 Referencing of Orders**

For each order issued against an agreement resulting hereunder, the University intends in good faith to reference this ITN for pricing, terms and conditions, delivery location, and other particulars. However, in the event the University fails to do so, the University's right to such terms and conditions, and particulars shall not be affected, and no liability of any kind or amount shall accrue to the University.

#### **6.41 Remedies and Applicable Law**

The Agreement shall be governed by and construed in accordance with the laws of the State of Florida (without regard to principles of conflict of laws) and the rule and regulations of the Florida Board of Governors and the University. University and Successful Vendor shall have all remedies afforded each by said law. The venue in any action or litigation commenced to enforce the Agreement shall be instituted in Gainesville, Florida.

#### **6.42 Right of Inspection**

University shall have the right to inspect the goods at delivery before accepting them.

#### **6.43 Right of Offset**

The University shall be entitled to offset against any sums due the Successful Vendor, any expenses or costs incurred by the University, or damages assessed by the University concerning the Successful Vendor's non-conforming performance or failure to perform the Agreement, or any other debt owing the University, including expenses, costs and damages described in the termination provisions contained herein.

#### **6.44 Shipment Under Reservation Prohibited**

Successful Vendor is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of the goods.

#### **6.45 Specifications: Brand Name or Acceptable Alternate**

Where in these specifications reference is made to materials, trade names, catalog numbers or articles of certain manufacture, it is done for the sole purpose of establishing a basis of a comparable standard of quality, performance, characteristics desired and is not intended to limit or restrict competition. It shall be understood that such method of specification description is not intended to exclude other processes, similar designs, or kinds of materials, but is intended solely as a means of establishing a standard of comparison to be utilized for solicitation evaluation purposes. Other material or product may be used, if in the sole opinion of the University, they are equal in durability, quality and of a design in harmony with the intent of these specifications. Such other material or product which is substantially equivalent to those specific brand(s) specified shall qualify for solicitation evaluation and award consideration by the University. The University reserves the right to reject any substitute material or product which, in its opinion, does not meet the standard of quality established by reference in these specifications and is not considered an acceptable alternate for the intended use and purpose. The burden of proof as to meeting the requirements of these specifications shall be the responsibility of the submitting vendor. Such proposer(s) who is offering any material or product other than the item(s) specified herein must submit with their solicitation response catalog cuts and detailed specifications which will completely describe the item(s) on which they are offering for an acceptable alternate determination by the University. Where the proposer proposes to substitute a material or product which is not known to the University, he/she shall be prepared to submit samples on request for the University's inspection and evaluation. The cost of transportation, both ways, of such samples shall be borne by the submitting proposer.

#### **6.46 Successful Vendor to Package Goods**

Successful Vendor will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows: (a) Successful Vendor's name and address; (b) Consignee's name, address and purchase order number; (c) Container number and total number of containers, e.g. box 1 of 4 boxes and (d) the number of the container bearing the packing slip. Successful Vendor shall bear cost of packaging unless otherwise provided.

#### **6.47 Termination**

##### **6.47.1 Convenience**

Either party reserves the right to terminate the Agreement in whole or part at any time with 90 days written notice without penalty or cause. Upon receipt of the written notice, the Successful Vendor shall promptly stop all work as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the University. In the event of termination under this provision, and with written request by the University, all documents, data and reports prepared by the Successful Vendor under the Agreement specific for University shall become the property of and delivered to the University. The Successful Vendor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of termination. Such compensation shall be the Successful Vendor's sole remedy against the University in the event of termination under this provision.

##### **6.47.2 Default**

The University reserves the right to terminate the Agreement in whole or in part due to the failure of the Successful Vendor to comply with any term or condition of the Agreement, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory

progress in performing the Agreement. The University shall provide written notice of the termination and the reasons for it to the Successful Vendor. Upon termination under this provision, all goods, materials, documents, data and reports prepared by the Successful Vendor under the Agreement shall become the property of and be delivered to the University on demand. The University may, upon termination of the Agreement, procure, on terms and in the manner that it deems appropriate, materials, or services to replace those under the Agreement.

#### **6.47.3 Gratuities**

The University may, by written notice to the Successful Vendor, cancel the Agreement if it is discovered by the University that gratuities, in the form of entertainment, gifts or other, were offered or given by the Successful Vendor, or any agent or representative of the Successful Vendor, to any officer or employee of the University with a view toward securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such Agreement. In the event the Agreement is canceled by the University pursuant to this provision, University shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Successful Vendor in providing such gratuities.

#### **6.47.4 Insolvency**

The University shall have the right to terminate the Agreement at any time in the event Successful Vendor files a petition in bankruptcy; or is adjudicated bankrupt; or if a petition in bankruptcy is filed against Successful Vendor and not discharged within thirty (30) days; or if Successful Vendor becomes insolvent or makes an assignment for the benefit of its creditors or an arrangement pursuant to any bankruptcy law; or if a receiver is appointed for Successful Vendor or its business.

#### **6.47.5 Lack of Funds**

The Agreement may be canceled without further obligation on the part of the University of Florida in the event that sufficient appropriated funding is unavailable to assure full performance of the terms. The Successful Vendor shall be notified in writing of such non-appropriation as soon as reasonably possible. No penalty shall accrue to the University in the event this cancellation provision is exercised. This cancellation provision shall not be construed so as to permit the University to terminate the Agreement in order to acquire similar equipment, material, supplies or services from another party.

#### **6.47.6 Stop Work Order**

The University may at any time, by written order to the Successful vendor, require the Successful Vendor to stop all or any part of the work called for by the Agreement for a period of ninety (90) days after the order is delivered to the Successful Vendor, and for any further period to which the parties may agree. The order shall be specifically identified as a Stop Work Order issued under this provision. Upon receipt of the order, the Successful Vendor shall immediately comply with its terms and take all reasonable steps to minimize the incidence of costs allocable to the work covered by the order during the period of work stoppage. If a Stop Work Order issued under this provision is canceled or the period of the order or any extension expires, the Successful Vendor shall resume work. The University shall make an equitable adjustment in the delivery schedule or Agreement price, or both, and the Agreement shall be amended in writing accordingly.

#### **6.47.7 Suspension or Debarment**

The University may by written notice to the Successful Vendor immediately terminate the Agreement if the University determines that the Successful Vendor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but limited to, being disapproved as a subcontractor Vendor of any public procurement unit or other governmental body.

#### **6.47.8 Continuation of Performance Through Termination**

The Successful Vendor shall continue to perform, in accordance with the requirements of Agreement, up to the date of termination, as directed in the termination notice.

#### **6.48 Title and Risk of Loss**

The title and risk of loss of the goods and equipment shall not pass to University until University actually receives the goods and equipment at the point or points of delivery.

#### **6.49 Warranties**

Successful Vendor warrants that the goods furnished will conform to the manufacturer's specifications, and descriptions listed herein or in catalogs, furnished by the Successful Vendor. In the event of a conflict between the specifications, drawings, and descriptions, the specifications shall govern.

a) Instruments

i) Warranty.

- (1) Vendor warrants to Buyer that the Products sold to University are, at the time of shipment to University from Vendor, free from defects in materials and workmanship.
- (2) This warranty shall be valid for a period of 90 days from the date of delivery to University, unless a different period is specified herein, or in Vendor's applicable price list in which case such specified period shall apply. Notwithstanding anything to the contrary contained herein, the warranty period for data processing equipment, including data storage devices, processors, printers, terminals, communication interfaces, tape drives and all similar devices, is in all cases limited to ninety (90) days from the date of delivery to University.
- (3) Except in the case of an authorized distributor of Vendor, authorized in writing by Vendor to extend this warranty to distributor's customers, the warranty herein applies only to University as the original purchaser from Vendor and may not be assigned, sold or otherwise transferred to any third party.
- (4) As University's sole and exclusive remedy under this warranty, Vendor agrees either to repair or replace, at Vendor's sole option, any part or parts of such Products which, under proper and normal conditions of use, prove(s) to be defective within the applicable warranty period. Alternatively, Vendor may at any time, in its sole discretion, elect to discharge its warranty obligation hereunder by accepting the return of any defective Product pursuant to the terms set forth herein and refunding the purchase price paid by University.

ii) Exclusions and Limitations.

- (1) It is recognized that some parts by their nature may not function for the warranty period applicable to the Product. Therefore, expressly excluded from the warranty herein are chromatography columns, filaments, energy sources, lamps, power amplifier tubes, graphite tubes, sample cell holders, burner and furnace chambers, nebulizers, and other similar parts referenced in the Product's applicable operating manual.
- (2) The warranty herein excludes any equipment or accessories which are identified on applicable price lists, quotations, special promotional materials, or on the face hereof, for

which this limited warranty may be further limited. Included within this category are items produced by third party manufacturers (as to which Vendor passes to University the warranty it has been provided by the manufacturer) and items which are sold at specially reduced prices with reduced warranty protection (in some cases, extended warranty protection may be available at an increased price).

- (3) This warranty does not cover loss, damage, or defects resulting from: transportation to the University's facility, improper or inadequate maintenance by University, University-supplied software or interfacing, unauthorized modification or misuse, operation outside of the environmental specifications for the Product or improper site preparation or maintenance
  - (4) No warranty is made with respect to used, reconstructed, refurbished or previously owned Products, which will be so marked on the face hereof and, unless otherwise indicated on the face hereof, shall be sold "As Is."
  - (5) The warranty herein applies only to Products within the country of original delivery. Products transferred outside the country of original delivery, either by Vendor at the direction of University or by University's actions subsequent to delivery, may be subject to additional charges prior to warranty repair or replacement of such Products based on the actual location of such Products and Vendor's warranty and/or service surcharges for such location(s).
- iii) Place of Service. Except when otherwise provided in Vendor's current applicable price list, Vendor shall use reasonable efforts to perform all warranty services hereunder at University's facility, as soon as reasonably practicable after notification by University of a possible defect.
  - iv) Software and Firmware Products. The sole and exclusive warranty applicable to software and firmware products provided by Vendor for use with a processor is as follows: Vendor warrants that such software and firmware will conform to Vendor's program manuals current at the time of shipment to University when properly installed on the processor, provided, however, that Vendor does not warrant that the operation of the processor or software or firmware will be uninterrupted or error-free.
- b) Reagents –
    - i) Seller warrants, at the time of shipment, the products are: (a) free from defects, in materials and workmanship and (b) conform to specifications that accompany the products.
    - ii) Customer shall notify of any breach of warranty within 30 days of receipt of order, and no claim shall be honored if the customer fails to notify Seller within the 30 day period.
  - c) **DISCLAIMER AND EXCLUSION OF OTHER WARRANTIES - VENDOR MAKES NO OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, DESIGN AND FITNESS FOR A PARTICULAR PURPOSE.**

**Exclusive Remedies. TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL PERKINELMER BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES IN CONNECTION WITH THIS AGREEMENT, THE SERVICES PROVIDED OR OTHERWISE, EVEN IF PERKINELMER IS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING AND EXCEPT TO FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, PERKINELMER'S LIABILITY IN CONNECTION WITH THIS AGREEMENT, THE SERVICES PROVIDED OR OTHERWISE SHALL NOT EXCEED, AND BUYER'S EXCLUSIVE REMEDY IN ANY EVENT SHALL BE LIMITED TO, THREE TIMES THE AMOUNT ACTUALLY PAID BY BUYER FOR THE UNDERLYING SERVICE.** Each party to this Agreement agrees to be fully responsible for its acts or omissions, or its agents' acts or omissions when acting within the scope of employment or agency, and agrees subject to the limitation of liability in this limitation of liability section hereof to be liable for any damage resulting from said acts or omissions. Nothing in the Agreement is intended to serve as a waiver of sovereign immunity by The University of Florida Board of Trustees, the University of Florida and/or the Florida Board of Governors. Nothing in the Agreement shall be construed as consent by a state agency, public body corporate, or political

subdivision of the State of Florida to be sued in any matter arising out of any contract by any party or parties.

**6.50 Payment Card Industry Data Security Standard.**

For e-commerce business and/or credit card transactions, Proposer agrees to be bound by the requirements and terms of the Rules of all applicable Card Associations, as amended from time to time, and be solely responsible for security and maintaining confidentiality of Card transactions processed by means of electronic commerce up to the point of receipt of such transactions by Bank.

Proposer is required to be in compliance with the requisites of the SAS 70 and/or Payment card Industry Data Security Standard and provide written attestation of compliance annually.



**PerkinElmer Health Sciences, Inc. ("PerkinElmer") – and University of Florida ITN15NH-115 Service Agreement Terms and Conditions**

**1. TERMS OF AGREEMENT:** These Service Agreement Terms and Conditions (this "Agreement") shall govern all orders for and purchases of services and parts under a PerkinElmer Service Plan ("Services") and shall prevail over any pre-printed, standard or other terms set forth in Buyer's purchase order or any other document not signed by an authorized representative of PerkinElmer, which are hereby rejected and shall be void. Buyer's submission of a purchase order or other instrument regarding the purchase of Services in response to PerkinElmer's quotation or any other PerkinElmer document that includes or incorporates these terms shall be deemed acceptance of these terms to the exclusion of any other terms and conditions appearing in or referenced in such purchase order or other instrument.

**2. REASONABLE EFFORTS:** PerkinElmer will use reasonable efforts under the circumstances to provide Services as quickly as possible. The Services will be scheduled at a time mutually agreed upon by PerkinElmer and the Buyer. Parts and components replaced or otherwise utilized in the repair of the instrument may be either new or refurbished at the discretion of PerkinElmer.

**3. TERM; TERMINATION:** PerkinElmer may accept or reject at its discretion a purchase order for Services. Unless otherwise expressly stated by PerkinElmer in writing or under the terms of the purchased Service Plan, the initial term of a Service Plan and this Agreement is one year, commencing on the date designated by PerkinElmer in its quotation or otherwise specified to Buyer. A Service Plan may be terminated by either party upon at least thirty (30) days written notice to the other party. If Buyer is past due with respect to any invoices related to the account with PerkinElmer, PerkinElmer may, upon written notice to Buyer, suspend Services, demand payment for the balance due under this Agreement, and/or terminate this Agreement. In connection with a termination for convenience by Buyer, Buyer's total payment obligation to PerkinElmer under this Agreement shall be the total price of Services actually performed and expenses actually incurred in servicing the covered equipment under the Service Plan.

**4. PAYMENT:** Payment is due by Buyer NET 30 upon receipt of invoice. Unless installment payment terms are agreed in writing by PerkinElmer and Supplier, Buyer shall deliver payment in full to the address set forth in PerkinElmer's invoice. Invoices not paid timely are subject to the lesser of fifteen percent (15%) per annum or the maximum prevailing legal interest rate allowed applicable Florida state statute calculated from date of delinquency through the date payment is made in full.

**5. WARRANTY; LIMITATION OF LIABILITY:** PerkinElmer warrants that it will provide Services at least in accordance with generally accepted standards prevailing in the instrument repair industry, at the time and place performed. Warranty claims must be made within 90 days after Services are performed. **PERKINELMER MAKES NO OTHER WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY WITH RESPECT TO ITS SERVICES, WHICH WARRANTIES ARE EXPRESSLY DISCLAIMED.** PERKINELMER'S SOLE LIABILITY AND RESPONSIBILITY UNDER THIS AGREEMENT FOR BREACH OF WARRANTY IS REPERFORMANCE OF THE SERVICES WITHIN A REASONABLE TIME OR RETURN OF THE FEE PAID FOR THE DEFECTIVE SERVICES, AT PERKINELMER'S OPTION. THESE ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH OF WARRANTY. TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL PERKINELMER BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES IN CONNECTION WITH THIS AGREEMENT, THE SERVICES PROVIDED OR OTHERWISE, EVEN IF PERKINELMER IS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING AND EXCEPT TO FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, PERKINELMER'S LIABILITY IN CONNECTION WITH THIS AGREEMENT, THE SERVICES PROVIDED OR OTHERWISE SHALL NOT EXCEED, AND BUYER'S EXCLUSIVE REMEDY IN ANY EVENT SHALL BE LIMITED TO, THREE TIMES THE AMOUNT ACTUALLY PAID BY BUYER FOR THE UNDERLYING SERVICE PLAN. EACH PARTY TO THIS AGREEMENT AGREES TO BE FULLY RESPONSIBLE FOR ITS ACTS OR OMISSIONS, OR ITS AGENTS' ACTS OR OMISSIONS WHEN ACTING WITHIN THE SCOPE OF EMPLOYMENT OR AGENCY, AND AGREES, SUBJECT TO LIMITATION OF LIABILITY IN THIS SECTION HEREOF, TO BE LIABLE FOR ANY DAMAGE RESULTING FROM SAID ACTS OR OMISSIONS. NOTHING IN THE AGREEMENT IS INTENDED TO SERVE AS A WAIVER OF SOVEREIGN IMMUNITY BY THE UNIVERSITY OF FLORIDA BOARD OF TRUSTEES, THE UNIVERSITY OF FLORIDA AND/OR THE FLORIDA BOARD OF GOVERNORS. NOTHING IN THE AGREEMENT SHALL BE CONSTRUED AS CONSENT BY A STATE AGENCY, PUBLIC BODY CORPORATE, OR POLITICAL SUBDIVISION OF THE STATE OF FLORIDA TO BE SUED IN ANY MATTER ARISING OUT OF ANY CONTRACT BY ANY PARTY OR PARTIES.

**5. EXCLUSIONS:** Service Plans do not include software or firmware upgrades, except where specifically included in PerkinElmer's quotation, and do not include replacement of parts, costs or repairs for defects or damages arising from or in connection with (a) abuse, misuse, mishandling, improper or inadequate maintenance, or failure to operate equipment in accordance with applicable specifications or instructions; (b) causes beyond PerkinElmer's reasonable control, including, without limitation, acts of God, power surges or failure, failure or interruption in communication lines, or corrosive Buyer samples; (c) installation of software or interfacing, or use in combination with software or products, not supplied or authorized by PerkinElmer; or (d) electrical work, transportation, modification, relocation, deinstallation, reinstallation, repair or service, performed by Buyer or by persons other than PerkinElmer authorized personnel. Further, parts in contact with any liquid, including but not limited to, seals, filters, gaskets, valves, syringes, tubing, tips, etc., are considered wetted and shall be deemed user replaceable and not covered by any Service Plan, unless otherwise stated in PerkinElmer's quotation.

**6. CONSUMABLES:** The cost of consumables supplied by PerkinElmer in performing the Services are the responsibility of Buyer unless otherwise stated in PerkinElmer's quotation. Consumables include PerkinElmer's usual and customary parts, supplies and other items which are expendable by their nature or intended use, and those which are listed in the applicable instrument user's manual.

**7. INSTRUMENT RECERTIFICATION:** PerkinElmer may require instrument recertification on a time and materials basis as a condition to performing Services if an instrument has not been under warranty or a service plan immediately prior to the time of Services.

**8. TRAINING; INSTRUMENT RELOCATION:** Service Plans do not include Buyer training or services related to the relocation of instruments unless otherwise specifically stated in writing by PerkinElmer in any particular case.

**9. ASSIGNMENT:** Neither this Agreement nor any Service Plan is assignable or otherwise transferable by Buyer.



**10. AMENDMENT; ENTIRE AGREEMENT:** No amendment or modification of this Agreement shall be binding unless in writing and signed by an authorized representative of both PerkinElmer and Buyer. This Agreement, together with PerkinElmer's quotation regarding the Service Plan(s) or other services subject to these terms and conditions, and PerkinElmer's description of the Services provided under the Service Plan purchased by Buyer, represents the entire agreement between the parties with respect to the subject matter herein.