



## Master Services Agreement

This Master Services Agreement, effective as of the later of the dates of signature set forth below (the “Effective Date”) is by and between JCM Analytics LLC, a North Carolina limited liability company with its principal address at 404 Hunt Street, Mailbox 17, Durham, NC 27701 (“JCM Analytics”), and Rowan University, a public research institute of the State of New Jersey with its principal address at 201 Mullica Hill Road, Glassboro, New Jersey 08028 (“Client”).

### RECITALS

**WHEREAS**, JCM Analytics provides a suite of proprietary software and logistics services for managing COVID-19 testing and related services, including its integrated COVID-19 response management platform *JCMWorks*; and

**WHEREAS**, Client wishes to engage JCM Analytics to provide COVID-19-related services as mutually agreed in one or more Statements of Work.

**NOW THEREFORE**, for good and valuable consideration, the parties agree as follows:

**1. DEFINITIONS.** As used in this Agreement:

1.1 “**Access Credentials**” mean login information, usernames, passwords, challenge questions/answers, security protocols, and policies through which Users access and use the JCM Analytics Platform.

1.2 “**Applicable Laws**” means applicable local, state, and federal laws, statutes, orders, rules, provisions, regulations, ordinances, treaties, directives, and other guidelines and requirements which have legal effect.

1.3 “**Client Inputs**” means information, data, text, and content, including but not limited to User and test information, which are input, posted, provided, and/or uploaded to the JCM Analytics Platform by Client and/or its Users.

1.4 “**Documentation**” means user guides, manuals, and other documentation, whether in print or electronic form, that are made available to Client and that describe the features, functions, and use of the JCM Analytics Platform and/or the Services.

1.5 “**Operational Data**” means statistical, processing and/or aggregated information, data, metadata, inferences, interrelationships, and/or associations generated through use of the Services and the JCM Analytics Platform.

1.6 “**JCM Analytics Platform**” means the JCM Analytics software platform named *JCMWorks* that is provided on a software as a service basis, so long as such platform is identified in the Statement of Work as being made available to Client as part of the Services.

1.7 “**JCM Analytics Technology**” means the computer software, computer code, scripts, application programming interfaces, methodologies, processes, templates, work flows, diagrams, tools, algorithms, formulas, user interfaces, know-how, trade secrets, techniques, third party services and technology, and other tangible and intangible technical material, information, and works of authorship underlying, associated with, or otherwise used to make available the JCM Analytics Platform and the Services, including, without limitation, all upgrades, enhancements and improvements thereto and all derivative works thereof, and related intellectual property rights.

1.8 “**Services**” means, collectively, the testing planning, processing, coordination, platform setup/implementation, and/or other services as specified in a Statement of Work (including the delivery of the JCM Analytics Platform).

1.9 “**Statement of Work**” means a mutually agreed statement of work, ordering, or other similar document that identifies the Services to be performed by JCM Analytics, Client’s responsibilities and obligations, fees, and additional terms and conditions.

1.10 “**Users**” mean the individuals associated with Client’s organization for whom Client enables access and use of the JCM Analytics Platform. Restrictions on number and types of Users, as well as the access and use rights for different types of Users, may be set forth in the associated Statement of Work and/or Documentation.

## 2. SERVICES

2.1 **Services.** JCM Analytics shall use commercially reasonable efforts to provide Services to Client as set forth in agreed Statements of Work. Client agrees that JCM Analytics may use subcontractors in connection with the performance of Services. JCM Analytics will be responsible for any breach of this Agreement by any of its subcontractors. Notwithstanding the foregoing, JCM Analytics is not responsible for any breaches, acts, delays, errors, or omissions caused by a nationally recognized courier/delivery service.

2.2 **Hours of Services.** Unless otherwise agreed in a Statement of Work or in this Agreement, JCM Analytics shall provide Services during its regular business hours from 9:00 a.m. until 5:00 p.m. Eastern Time on weekdays, excluding JCM Analytics holidays ("**Regular Business Hours**").

### 2.3 Platform Updates

- (a) JCM Analytics may from time to time update the JCM Analytics Platform to improve functionality or add features. During the Term, Client must use the JCM Analytics Platform as updated or modified. JCM Analytics, at its sole discretion, will determine type, frequency, and notification parameters for updates or upgrades of the JCM Analytics Platform. The terms of this Agreement will govern any JCM Analytics Platform updates provided by JCM Analytics.
- (b) Client agrees to notify JCM Analytics when Client is planning to make or making a change to its systems or software which may impact use of the JCM Analytics Platform. JCM Analytics will review changes and advise Client of potential adverse impacts to use of the JCM Analytics Platform. JCM Analytics does not warrant JCM Analytics Platform when Client changes are inconsistent with published system requirements.

## 3. LICENSE AND ACCESS

3.1 **License to JCM Analytics Platform.** Subject to Client's compliance with the terms and conditions in this Agreement and the Documentation, JCM Analytics: (a) shall make the JCM Analytics Platform available to Client pursuant to the terms of this Agreement during the Term (as defined below) and (b) grants to Client during the Term a non-exclusive, non-transferable, non-sublicensable right to access and use the JCM Analytics Platform for its own business purposes only.

3.2 **Client Requirements.** Client will be solely responsible for acquiring and maintaining all telecommunications and Internet services and other hardware and software required to access and use the JCM Analytics Platform, including, without limitation, all costs, fees, expenses, and taxes related to the foregoing. JCM Analytics will not be responsible for any loss or corruption of data, lost communications, or any other loss or damage of any kind arising from any such telecommunications or Internet services or any such hardware or software.

3.3 **Availability of JCM Analytics Platform.** JCM Analytics will use commercially reasonable efforts to maintain the availability of the JCM Analytics Platform on a full-time (365 days per year, 24 hours per day) basis. Client acknowledges that JCM Analytics cannot guarantee complete availability of an online service, and that the JCM Analytics Platform may be unavailable for, among other reasons, scheduled maintenance (for which prior notice will be provided to Client) and force majeure events, as described in Section 14.7 below.

## 4. USERS

4.1 **Users.** Client will promptly notify JCM Analytics of any suspected or alleged violation of this Agreement by any User and will cooperate with JCM Analytics with respect to: (a) investigation by JCM Analytics of any suspected or alleged violation of this Agreement, and (b) enforcement of this Agreement. JCM Analytics may suspend or terminate any User's access to and/or use of the JCM Analytics Platform upon notice to Client in the event JCM Analytics reasonably determines that such User has violated any terms of this Agreement. Client will at all times be responsible for all actions and omissions of its Users and those taken under a User's account undertaken through the use of Client's Access Credentials.

## 5. INTELLECTUAL PROPERTY AND USE RESTRICTIONS

5.1 **Ownership.** The JCM Analytics Platform, the Services, the JCM Analytics Technology, and the Documentation, as well as all intellectual property rights in each of the foregoing, are the exclusive property of JCM Analytics. Except for the rights and licenses expressly granted herein, all rights in and to all the foregoing are reserved by JCM Analytics. This Agreement is not a sale and does not convey to Client any rights of ownership or other intellectual property right in, to, or under any JCM Analytics Platform, the Documentation, or any JCM Analytics Technology except for the license rights as expressly provided herein. Nothing in this Agreement will be deemed to grant to Client any right to receive a copy of the software underlying the JCM Analytics Platform, or any other JCM Analytics Technology, in either object or source code form.

5.2 **Use Restrictions.** Client shall comply with all Applicable Laws in its use of the JCM Analytics Platform. Client shall, and shall ensure that its Users will, use the JCM Analytics Platform solely for Client's internal business purposes as contemplated by this Agreement and shall not: (a) license, sublicense, sell, resell, rent, lease, transfer, assign, copy, reproduce, distribute, time share, or otherwise commercially exploit or make the JCM Analytics Platform available to any third party, other than as expressly permitted by this Agreement; (b) interfere with or disrupt the integrity or performance of the JCM Analytics Platform, the JCM Analytics Technology, or the data contained therein or disrupt any servers or networks connected to the JCM Analytics Platform, or disobey any requirements, procedures, policies or regulations of networks connected to the JCM Analytics Platform of which Client is aware; (c) attempt to gain unauthorized access to the JCM Analytics Platform or the JCM Analytics Technology or any related systems or networks; (d) remove, alter, or obscure any proprietary notices associated with the JCM Analytics Platform; (e) attempt to probe, scan, or test (including without limitation stress testing or penetration testing) the vulnerability of any system or network associated with the JCM Analytics Platform or breach any security or authentication measures; (f) reverse engineer, or create any derivative works of, the JCM Analytics Platform; (g) access, view, or modify the source code of the JCM Analytics Platform; or (h) utilize the JCM Analytics Platform to (1) send or store infringing, obscene, threatening, libelous, or otherwise unlawful, unsafe, malicious, abusive, or tortious material, including material harmful to children or violative of third party privacy rights; or (2) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs or plant malware on JCM Analytics' computer systems, those systems of JCM Analytics' third party service providers or vendors, or otherwise use the JCM Analytics Platform to attempt to upload and/or distribute malware.

5.3 **Feedback.** Notwithstanding anything to the contrary herein, JCM Analytics shall have a royalty-free, worldwide, perpetual license to use or incorporate into the Services and/or JCM Analytics Platform any suggestions, ideas, and enhancement requests or other feedback relating to the Services and/or JCM Analytics Platform ("Feedback") provided by Client or any authorized User relating to the Services and/or JCM Analytics Platform, so long as Client is not identified as the source for any such Feedback.

## 6. CLIENT RESPONSIBILITIES

### 6.1 Client Information and Cooperation.

- (a) Client shall provide to JCM Analytics the documentation, information, and assistance reasonably necessary to enable JCM Analytics to provide to Client access to and use of the JCM Analytics Platform and Services in accordance with the terms of this Agreement. Client shall provide JCM Analytics with prompt and reasonable access to information, documentation, software, and systems (collectively, "Client Systems"), as well as appropriate Client personnel, as reasonably requested by JCM Analytics for the purposes of providing the JCM Analytics Platform and Services pursuant to this Agreement. Client hereby grants to JCM Analytics a non-exclusive license during the Term to use Client Systems solely in any manner reasonably necessary to provide the Services and JCM Analytics Platform. Client shall otherwise reasonably cooperate with JCM Analytics in the performance of the Services and the provision of the JCM Analytics Platform.
- (b) If requested by JCM Analytics, Client will designate one or more authorized contacts who will be responsible for providing Client information to JCM Analytics.
- ~~(c) JCM Analytics shall not be liable for any delays or inability of JCM Analytics to provide the Services or JCM Analytics Platform to the extent the same arise out of Client's failure to comply with its obligations under this Agreement or the Statement of Work.~~

### 6.2 Client Inputs.

- (a) Client retains sole responsibility for the Client Inputs, including without limitation for obtaining consent as required from any third party for delivering such Client Inputs to JCM Analytics, and for their accuracy and quality. JCM Analytics will not be liable or responsible for any errors in any Client Inputs or any security breaches involved in delivery of the Client Inputs to JCM Analytics (or any of its subcontractors).
- (b) When Client, and not any other third-party such as any representative of JCM Analytics and/or the Lab, is solely responsible for Client's Inputs being input, posted, provided, and/up uploaded to the JCM Analytics Platform, Client represents, warrants, and covenants that the Client Inputs:
  - (i) are provided to JCM Analytics in accordance with all Applicable Laws, do not otherwise violate any Applicable Laws, and will not give rise to any civil liability when used as permitted by the terms of this Agreement;
  - (ii) will not and do not infringe any intellectual property rights when used as permitted by the terms of this Agreement;

- (iii) will not and do not violate the privacy, publicity, or other rights of third parties or any other law, statute, ordinance, or regulation when used as permitted by the terms of this Agreement;
  - (iv) will not and do not misrepresent the source of the Client Inputs;
  - (v) will not and do not misrepresent any User's identity in any way; and
  - (vi) will not and do not to the best of Client's knowledge contain any viruses, Trojan horses, spyware, malware, worms, time bombs, cancelbots, or other disabling devices or other harmful component intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information.
- (c) Client hereby grants to JCM Analytics a non-exclusive, royalty-free, license, to access, use, and copy, the Client Inputs solely as necessary in connection with its provision of the Services and JCM Analytics Platform.

**6.3 Representations.** Client represents, warrants and covenants that it has, and will have during the Term, the legal right and authority to provide JCM Analytics with access to, use of, and license to the Client Systems and the Client Inputs as set forth in this Agreement, and such access, use, and license will not cause a breach of any third-party agreement, violate any right of a third party, or any Applicable Law. Without limiting the generality of the foregoing, Client represents, warrants, and covenants that all times during the Term, it will have obtained all (a) consents reasonably necessary for JCM Analytics to access and use the Client Systems and the Client Inputs under the terms of this Agreement, and (b) licenses reasonably necessary for JCM Analytics to access and use any software included in the Client Systems.

## **7. SECURITY.**

(a) In the course of providing the Services, JCM Analytics may have access to records that may be protected, as applicable, by the Family Educational Rights and Privacy Act ("FERPA"), the Health Insurance Portability and Accountability Act of 1996 and associated rules and regulations ("HIPAA"), and other Applicable Laws. JCM Analytics agrees that it shall use any information it is provided solely to provide the Service and shall at all times comply with all Applicable Laws and its own policies and procedures described in Section 7(b); provided that JCM Analytics may compile aggregated and statistical information based on Client's use of the Services that does not identify Client or include any personally identifiable information in compliance with JCM Analytics' internal policies and Applicable Laws.

(b) JCM Analytics will maintain an information security program with administrative, technical, and physical security safeguards that are deemed appropriate by JCM Analytics and that comply with all Applicable Laws, including, but not limited to, those laws identified in Section 7(a). JCM Analytics' security program will include maintaining and complying with a written information security policy as well as a security awareness program covering, at a minimum, annual training of employees on security and safe computing practices.

(c) Each party agrees that it will adhere to all Applicable Laws relating to the privacy and protection of individually identifiable data, including but not limited to as applicable FERPA and HIPAA and any obligation under laws applicable to JCM Analytics to notify Client of a breach of an individually identifiable information, or protected health information (as such term is defined in HIPAA).

(d) Client will maintain an information security program with administrative, technical, and physical security ~~safeguards that are deemed appropriate by Client and that comply with all Applicable Laws, including, but not limited to,~~ those laws identified in Section 7(a). Client's security program will include maintaining and complying with a written information security policy as well as a security awareness program covering, at a minimum, annual training of employees on security and safe computing practices.

(e) JCM Analytics shall have no liability to any person for any damages or other losses suffered by Client (or any employee or agent of Client) or any User related to: (i) any use of Client's Access Credentials to the extent resulting from Client's failure to safeguard the Access Credentials; (ii) any malicious software operating on Client's computer system (e.g., keylogging programs), except if caused by JCM Analytics' negligence, willful misconduct, or breach of this Agreement; and (iii) any response by a User or Client (or any employee or agent of Client) to any phishing scam or spoof website, or to similar malicious activity by a third party.

(f) Client will notify JCM Analytics as soon as practicable if it learns of any unauthorized use of any Access Credentials or any other known or suspected breach of security. JCM Analytics reserves the right, in its reasonable discretion and without liability to Client or its Users, to take any action JCM Analytics deems reasonably necessary to ensure the security of the JCM Analytics Platform and Client's Access Credentials and account, including temporarily terminating Client's access or the access of any of Client's Users, changing passwords, or requesting additional information to authorize activities related to Client's account.

## 8. FEES AND PAYMENT

8.1 **Fees.** Client will pay to JCM Analytics the fees set forth in each applicable Statement of Work in accordance with the payment schedule set forth therein. Unless otherwise specified in the Statement of Work, payment must be received prior to JCM Analytics providing Client with use and access to the JCM Analytics Platform and all invoices issued by JCM Analytics will be due and payable thirty (30) days after Client's receipt. All fees are nonrefundable, except as expressly otherwise set forth herein, and will be paid in U.S. dollars and exclude all applicable sales, use, and other taxes. Any undisputed payments not received by JCM Analytics within ten (10) business days of the due date set forth on the invoice may be charged a fee of 1 and ½ percent (1 ½%) for each month such payment is not received, or the highest rate permitted by law, whichever is lower.

8.2 **Electronic Funds Authorization.** Client agrees that JCM Analytics in its discretion may require payment of some or all fees by use of credit cards, ACH or other electronic funds transfer mechanism ("**Electronic Payment Information**"). Client also agrees that JCM Analytics may require Electronic Payment Information and may use such Electronic Payment Information to complete payment at the time payment is due or if Client is late in payment. If Electronic Payment Information is required by JCM Analytics, Client agrees to maintain current Electronic Payment Information on file with JCM Analytics or JCM Analytics' payment processor. Notwithstanding anything to the contrary herein, JCM Analytics reserves the right not to deliver invoices to Client for payments required to be made with Electronic Payment Information.

8.3 **Taxes.** Fees under this Agreement are exclusive of any applicable sales, use or other taxes arising from this Agreement, excluding any taxes based on JCM Analytics' net income ("**Taxes**"). JCM Analytics will add any applicable Taxes to invoices under this Agreement, and Client agrees it is responsible for paying all such Taxes. If Client is exempt from Taxes, Client will provide applicable tax-exempt certificates to JCM Analytics. It is understood by the parties that Client is tax exempt.

## 9. CONFIDENTIALITY

9.1 **Confidential Information.** "**Confidential Information**" means all information and materials disclosed by or on behalf of a party (the "**Disclosing Party**") to the other party (the "**Receiving Party**"), whether orally or in writing, that are designated as confidential, either marked in writing where possible, or identified as such and confirmed in writing, or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of each party shall include the terms of any Statement of Work, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. For the avoidance of doubt, the JCM Analytics Platform and the JCM Analytics Technology constitutes Confidential Information of JCM Analytics.

9.2 **Protection of Confidential Information.** The Receiving Party will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Agreement and, except as expressly specified otherwise in this Agreement, will disclose Confidential Information of the Disclosing Party only to the employees and contractors of the Receiving Party who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than the Receiving Party's duty hereunder.

9.3 **Injunctive Relief.** Both parties acknowledge and agree that the Disclosing Party may be irreparably harmed by any violation of this Section 9. Therefore, in the event of a breach, the disclosing party shall be entitled, in addition to all other rights and remedies available at law or in equity, to seek (a) an injunction restraining such breach, without being required to show any actual damage or to post security or other bond; or (b) a decree for specific performance of the applicable provision of this Agreement.

9.4 **Survival.** Notwithstanding the termination or expiration of this Agreement, the obligations of the Receiving Party, with respect to the Confidential Information of Disclosing Party, shall be in full force and effect as follows: (a) in the case of any information or materials that constitute a trade secret within the meaning of Applicable Laws, for as long as such information and materials remain as a trade secret, or (b) in the case of any other information or materials, during the term of this Agreement and for five (5) years following the termination or expiration of this Agreement.

9.5 **Exceptions.** The Receiving Party's obligations under this Section 9 will not apply to any portion of the Disclosing Party's Confidential Information if the Receiving Party can document that such information: (a) was already lawfully known to the Receiving Party at the time of disclosure by the Disclosing Party; (b) is disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) was independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information. In addition, the Receiving Party will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is (i) approved in writing by the Disclosing Party or (ii) required by law (including but not limited to New Jersey Open Public Records Act, the Freedom of Information Act, etc.) or by the Statement of Work of a court or similar judicial or administrative body, provided

that the Receiving Party, as permitted by Applicable Laws, promptly notifies the Disclosing Party of such required disclosure in writing and cooperates with the Disclosing Party, at the Disclosing Party's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.

**9.6 Return of Confidential Information.** Subject to Section 13.7, the Receiving Party will return to the Disclosing Party all Confidential Information of the Disclosing Party in the Receiving Party's possession, or permanently erase all electronic copies of such Confidential Information, promptly upon the written request of the Disclosing Party, unless required by law to maintain a copy of such Confidential Information. In addition, the Receiving Party will have no obligation to delete Confidential Information stored within routine backup files.

## **10. WARRANTIES**

**10.1 Warranties by Both Parties.** Each party represents and warrants that: (a) it has full power and authority to enter into and perform this Agreement; and (b) that it will perform its obligations or exercise its rights hereunder in conformance with all Applicable Laws, including, without limitation, those related to privacy and data security.

**10.2 JCM Analytics Warranty.** JCM Analytics represents and warrants that the Services shall be performed in a professional manner using qualified personnel.

**10.3 Specific Disclaimers.** Client acknowledges that JCM Analytics does not provide medical, legal, or human resources advice or opinions and that Client's use of the JCM Analytics Platform and Services does not create any fiduciary obligations on the part of JCM Analytics to Client. **CLIENT ACKNOWLEDGES AND AGREES THAT THE JCM ANALYTICS PLATFORM AND SERVICES DO NOT CONSTITUTE MEDICAL TREATMENT OR MEDICAL ADVICE, AND JCM ANALYTICS IS NOT A HEALTHCARE PROVIDER.**

**10.4 Disclaimer of Warranty.** **EXCEPT FOR THE EXPRESS WARRANTIES IN THIS SECTION 10, JCM ANALYTICS MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, WHETHER, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION REGARDING THE JCM ANALYTICS PLATFORM, SERVICES, THE DOCUMENTATION, THE JCM ANALYTICS TECHNOLOGY OR OTHERWISE WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT AND EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT AS WELL AS ANY WARRANTY ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.**

**10.5 JCM Analytics** shall not be responsible for ensuring and does not represent or warrant that: (a) the Services or JCM Analytics Platform will meet Client's business requirements; (b) the Services or JCM Analytics Platform will be error-free or uninterrupted; or (c) all deficiencies in the JCM Analytics Platform can be found or corrected. JCM Analytics also will not be responsible for: (i) any failure to meet a warranty provided in Section 10.2 to the extent due to actions or omissions by Client or any User, or due to any Client System or infrastructure used to access or use the JCM Analytics Platform; (ii) loss or corruption of data except as a result of JCM Analytics' gross negligence or willful misconduct; or (iii) the inability of Client to access or interact with any other service provider through the Internet, other networks or users that comprise the Internet or the informational or computing resources available through the Internet except as a result of JCM Analytics' gross negligence or willful misconduct.

## **11. INDEMNIFICATION**

**11.1 JCM Analytics Indemnity.** JCM Analytics shall defend, indemnify, and hold harmless Client and its officers, directors, and employees from and against any third party claims, suits, or proceedings ("Claims") and any losses, expenses, costs, or damages related thereto, including reasonable attorneys' fees, brought against Client or its officers, directors, or employees by a third party (x) contending that Client's use of the JCM Analytics Platform in accordance with the Documentation infringes or otherwise violates any Intellectual Property Rights of such third party and shall pay all damages finally awarded by a court of competent jurisdiction or agreed to by JCM Analytics in settlement of the Claim or (y) arising from JCM Analytics' gross negligence or willful misconduct; or (z) based on any failure or alleged failure of JCM Analytics to comply with any Applicable Law. In the event that the JCM Analytics Platform or any part thereof is likely to, in JCM Analytics' sole opinion, or does become the subject of an infringement-related Claim, and JCM Analytics cannot, at its option and expense, procure for Client the right to continue using the JCM Analytics Platform, or any part thereof, or modify the JCM Analytics Platform, or any part thereof, to make them noninfringing, then JCM Analytics may terminate this Agreement with written notice to Client, in which case JCM will provide the Client with a refund of any pre-paid fees for the remaining portion of the Term. JCM Analytics shall have no liability for any Claim or demand to the extent arising from (a) the use or combination of the JCM Analytics Platform or any part thereof with software, hardware, or other materials not developed by JCM Analytics if the JCM Analytics Platform or use thereof would not infringe without such combination; (b) modification of the JCM Analytics Platform by a party other than JCM Analytics, if the use of unmodified JCM Analytics Platform would not constitute infringement; (c) a use of the JCM Analytics Platform by Client or any User in a manner outside the scope of

any right granted herein or not in accordance with the Documentation if the claim would not have arisen but for such breach or unauthorized use; (d) the Client Inputs; or (e) an allegation made against Client prior to the execution of this Agreement or any allegation based upon any action by Client prior to the execution of this Agreement. **The foregoing states JCM Analytics' entire liability and Client's exclusive remedy with respect to any alleged or actual infringement of intellectual property rights.**

**11.2 Indemnification Process.** The party seeking indemnification will promptly notify the other party of the claim and cooperate in defending the claim. Failure to provide timely notice or reasonable assistance will relieve the indemnifying party of its obligations under this Section 11 to the extent the indemnifying party has been materially prejudiced. The indemnifying party will have full control and authority over the defense, including appeals, negotiations, and any settlement, except that (a) it may not make an admission of fault on behalf of the other party without such party's written consent, (b) any settlement requiring the party seeking indemnification to admit liability requires prior written consent, not to be unreasonably withheld or delayed, and (c) the other party may join in the defense with its own counsel at its own expense.

## **12. LIMITATION OF LIABILITY.**

**12.1 Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER STATUTE, CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED TWO MILLION DOLLARS (\$2,000,000).

**12.2 Exclusion of Consequential and Related Damages.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY LOSS OF ACTUAL OR ANTICIPATED PROFITS, LOSS OF BUSINESS, LOSS OF OPPORTUNITY OR GOODWILL, LOSS OF, DAMAGE TO, OR CORRUPTION OF DATA, LOSS OF USE, OR FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED, WHETHER ARISING UNDER STATUTE, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

**12.3 Exclusions.** The foregoing limitations shall not apply to (i) amounts payable by Client to JCM Analytics under this Agreement, (ii) liability arising from indemnification obligations set forth in Section 11, or (iii) from a party's gross negligence or willful misconduct.

**12.4 Allocation of Risk.** Each party acknowledges that the fees set forth in this Agreement reflect the allocation of risk between the parties and that the other party would not enter into this Agreement without these limitations on its liability.

## **13. TERM AND TERMINATION.**

**13.1 Term.** The Agreement shall commence on the Effective Date and shall continue until terminated as set forth herein. Each Statement of Work will be in effect for the term or period of time set forth in such Statement of Work (the "Term").

**13.2 Termination.** Either party may terminate this Agreement or a Statement of Work if the other party materially breaches this Agreement or such Statement of Work and fails to cure such breach within thirty (30) days after receiving notice in writing of such breach. For clarity, each Statement of Work has its own Term, and termination of a Statement of Work does not terminate other Statement of Works agreed by the parties.

**13.3 Termination if No Active Statement of Work.** Either party may terminate this Agreement upon ten (10) days written notice to the other party if there is no active Statement of Work in place.

**13.4 Effect of Termination.** Termination shall not relieve Client of the obligation to pay any fees accrued or payable to JCM Analytics prior to the effective date of termination. In the event of termination by Client pursuant to Section 13.2, promptly after the effective date of such termination, JCM Analytics shall refund to Client on a pro-rata basis any prepaid fees paid by Client for Services or JCM Analytics Platform not provided as of the effective date of termination.

**13.5 Suspension.** At any time during the Term, JCM Analytics may immediately, and with prior and prompt notice to Client, suspend all or parts of its performance under a Statement of Work or may suspend any and all Users' access to the JCM Analytics Platform, in JCM Analytics' sole reasonable discretion, for any of the following reasons: (a) a reasonable threat to the technical security or technical integrity of the JCM Analytics Platform exists as determined by JCM Analytics; provided that JCM Analytics promptly recommences performance upon the cessation of the threat, or (b) Client has not paid any undisputed amounts due hereunder except that such suspension shall not occur until after Client has been provided with reasonable notice of such default and an opportunity to cure; or (c) Client is in violation of any of its obligations set forth in Section 5.2, except that such suspension shall not occur until after Client has been provided with reasonable notice of such default and an opportunity to cure unless the issue is of such a serious nature to require immediate suspension.



**13.6 Rights and Obligations Upon Expiration or Termination.** Upon expiration or termination of this Agreement, Client's and its Users' right to access and use the JCM Analytics Platform will immediately terminate, Client and its Users will immediately cease all use of the JCM Analytics Platform.

**13.7 Data Deletion and Retention.** If JCM Analytics stores Client Inputs as part of a Statement of Work, JCM Analytics shall have the right to retain such Client Inputs for up to twelve (12) months after termination of the Statement of Work (and at the end of such period, JCM Analytics shall promptly destroy all Client Inputs); provided, however, if JCM Analytics receives, no later than thirty (30) days after the termination of the Statement of Work, a written request for the delivery to Client of the thenmost recent copy of Client Inputs, or for destruction of Client Inputs, JCM Analytics will use reasonable efforts to deliver Client Inputs to Client and/or destroy Client Inputs within thirty (30) days of its receipt of such written request. After thirty (30) days after the termination of a Statement of Work, JCM Analytics shall have the right to destroy Client Inputs in its possession or control.

**13.8 Survival.** Sections 1, 5, 8, 9, 10.4, 10.5, 11, 12, 13, and 14 shall survive any termination or expiration of this Agreement.

#### **14. GENERAL.**

**14.1 Governing Law; Jurisdiction.** This Agreement and any action related hereto will be governed by and construed in accordance with the laws of the State of New Jersey, without reference to conflicts of law provisions. Any dispute with respect to this Agreement or matters relating to this Agreement will be brought and heard either in state or federal courts located in Gloucester County, New Jersey. In such event, the parties to this Agreement each consent to the in person jurisdiction and venue of such courts, which venue shall be the sole and exclusive venue for any dispute relating to this Agreement.

**14.2 Severability.** If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

**14.3 Waiver; Remedies.** Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity. The prevailing party in any action to enforce or otherwise arising under this Agreement shall be entitled to recover its reasonable attorneys' fees and its court costs.

**14.4 Entire Agreement.** This Agreement constitutes the entire agreement between the parties as to its subject matter, and supersedes all previous and contemporaneous agreements, proposals, or representations, written or oral, concerning the subject matter of this Agreement. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment, or waiver is to be asserted.

**14.5 No Assignment.** Neither party will assign, subcontract, delegate, or otherwise transfer this Agreement, or its rights and obligations herein, without obtaining the prior written consent of the other party, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void; provided, however, that either party may assign this Agreement without such consent in connection with a merger, acquisition, reorganization, or change of control, including without limitation a sale of all or substantially all of its assets, stock or business to which this Agreement relates. The terms of this Agreement will be binding upon the parties and their respective successors and permitted assigns.

**14.6 Force Majeure.** Any delay in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, failure of an internet service, hosting or cloud provider, or any other event beyond the reasonable control of such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the cause of such delay and to resume performance as soon as possible.

**14.7 Independent Contractors.** JCM Analytics' relationship to Client is that of an independent contractor, and neither party is an agent or partner of the other. Neither party will have, and neither party will represent to any third party that it has, any authority to act on behalf of the other.

**14.8 Notices.** All notices under this Agreement shall be in writing. All notices shall be given (i) by delivery in person (ii) by a nationally recognized next day courier service, (iii) by first class, registered or certified mail, postage prepaid, return receipt requested or (iv) by electronic mail to the address of the party specified in the Statement of Work, provided that there is confirmation of receipt. All notices shall be effective upon receipt by the party to which notice is given. Each party may change its address for receipt of notice by giving notice of such change to the other party.

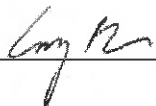


14.9 **Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer on any person or entity other than the parties hereto, any benefits, rights, or remedies.

14.10 **Additional Terms and Conditions.** The parties acknowledge and agree that this Agreement shall be subject to the Terms and Conditions of Rowan University as attached (Addendum A) and New Jersey Executive Order #166, Notice of Executive Order 166 Requirements for Posting of Winning Proposal and Contract Documents (Addendum A, Paragraph IX) and all relevant regulations and conditions.

Each party has caused its duly authorized representative to sign and accept this Agreement as of the Effective Date.

**JCM Analytics LLC**

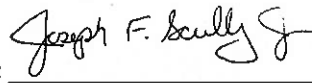
Signature: 

Name: Corey Palermo

Title: CEO

Date: 1/14/2021

**Rowan University**

Signature: 

Name: Joseph Scully

Title: Sr VP Finance and CFO

Date: Jan 15, 2021



JCM Analytics (JCMA) is a limited liability company formed explicitly to bring together diverse capabilities in the service of public health in this time of crisis. Our team brings experts with demonstrated success in the business, education, and public health sectors.

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## INTRODUCTION

This Statement of Work ("SOW") is between JCM Analytics, LLC ("JCMA") and Rowan University ("Client" or "you") and is subject to the terms of the Master Services Agreement between JCMA and Client (the "Agreement"). Capitalized terms not otherwise defined in this SOW have the meaning given to them in the Agreement.

The effective date of this SOW ("Effective Date") is the latest date of signature below.

## SERVICES SUMMARY

JCM Analytics, LLC (JCMA) will provide strategic and operational planning services, internet-based testing logistics software, barcode scanners, sample collection kits, specimen transportation to a JCMA-designated lab (the "Lab"), and lab capacity management, including pooled sample analysis and reflexive diagnostic testing to facilitate weekly self-administrations of SARS-CoV-2 PCR testing of Client students, faculty, and staff, and/or Client employees, which self-administrations are requested or required of such individuals by Client. JCMA will utilize its integrated COVID-19 response-management platform, *JCMWorks*, which provides the infrastructure to manage the distribution and collection of materials needed for SARS-CoV-2 testing. *JCMWorks* facilitates gathering, tracking, and transporting samples to the Lab for analysis and highly secure reporting. *JCMWorks* is a secure, open-architecture system that is capable of securely transferring data to and from other systems.

## STRATEGIC AND OPERATIONAL PLANNING

JCMA staff will coordinate strategic and operational planning with a designated Client task force or leadership team. The goals of these sessions include assessing the overall health and safety needs of the Client's institution and assisting the Client in developing operational, change management, and communication plans tailored to the institution's specific contexts and challenges. JCMA provides information and guidance in support of strategic and operational planning for testing and coordinates with the Client to make decisions regarding the timing, testing groups (pools) and frequency of testing.

Key to our service approach is the coordination of pooled screening tests to afford low-cost, regular testing of the entire campus community. Thus, a core component of operational planning is defining the testing needs of the institution. This will involve assisting Client in evaluating the structure of the institution (classrooms, facilities, etc.) in order to define optimal testing groups, determining the ideal testing frequency, and establishing the number and location of testing sites.

Our team has designed robust statistical techniques to establish COVID-19 testing approaches and standards. As tests are conducted and data gathered, our statisticians use these data to support the Client to refine optimal testing groups and frequency of testing.

## REGISTRATION

*JCMWorks* will allow Client administrative staff to register individuals ("Registrants") for testing by uploading a spreadsheet of data. The registration process will include (1) pre-registering all Registrants at the Client institution (students, faculty, and staff) and (2) assigning each Registrant to a testing group, as defined during operational planning (note that testing groups can be changed at any time). The Client will be responsible for uploading registrant and pool files 48 hours prior to sample check-in.

JCMA will generate electronic registration cards which serve as a unique and private ID for each Registrant. Based on Client preference, registrants can either login to *JCMWorks* to access their registration card electronically or receive physical registration cards on lanyards.

## PROVISION OF TEST MATERIALS

JCMA will provide periodic shipments of sample collection kits so that Client has sufficient materials to facilitate multiple testing sessions. We will ship all materials to a designated Client contact via FedEx, who offers advanced online tracking capabilities, ability to provide inside delivery of each shipment, and requirement of a receipt acknowledgment signature.

## TEST ADMINISTRATION

Based on registrant counts, JCMA will provide the Client with sufficient sample collection kits, including overage, to collect Registrant samples. The Client is responsible for distributing sample collection kits to Registrants on a schedule that aligns with Client's sample collection schedule. Sample kits are approved for home self-collection. Thus, samples may be collected at home by the registrant (with appropriate supervision, as needed) or collected on campus at a test site designated by the Client. JCMA will provide the Client with sample collection instructions in both written and video form, and English and Spanish language versions.

Each sample collection day client is responsible for establishing a secure sample collection site, which will include setting up a dedicated kiosk(s) (i.e., laptop or computer with access to *JCMWorks* and connected to a barcode scanner provided by JCMA) for linking Registrants to testing samples while maintaining security requirements. Client is responsible for identifying a test coordinator for each sample collection site to coordinate sample collection activities; JCMA will train staff in operation of the kiosk. Test coordinator will be trained by JCMA in advance of Client's initial sample collection event. Registrants will use their registration cards to submit test samples. When submitting a sample, the Registrant's (1) registration card and (2) barcode adhered to the sample will be scanned at the kiosk, using a no-contact technique, linking the two.

When all samples have been checked in, Client will box samples for pick up. Test samples will be picked up from each testing site at your institution and securely transported by a delivery service to the Lab for analysis.

## ANALYSIS AND REPORTING

Individual samples will be pooled at the lab using Client's pre-designated testing pools. When a pooled test result is negative, all associated samples are presumed negative. In the event of a positive pool, individual samples in the pool will be reflexively examined and the lab will report diagnostic results to JCMA and any additional required agencies (e.g., the state health department). Client will assign a provider to pre-authorize reflex testing in the event of a positive pool and will provide JCMA with the required registrant information (name, date of birth, address) to meet state/federal SARS-CoV-2 diagnostic testing reporting requirements. The Lab will upload all test results to *JCMWorks*. Client will receive pooled and individual test results within 24-48 hours of lab receipt of samples. Client will notify registrants of any positive results.

We recognize that many factors may influence accurate placement of samples, and that some samples may be misplaced in the wrong pools or misplaced altogether. *JCMWorks* will track actual samples up to the point of collection, and will match scanned barcodes to scanned barcodes received back from the lab

in the *JCMWorks* data format. Client realizes that this process, while highly accurate, is not infallible. For example, Registrants could exchange samples before collection. It is the Client's responsibility to use best efforts to prevent such actions through education and proper application of procedures at the sample collection site.

## TERM

JCMA will provide the services in this SOW at the rates specified in Appendix A for sample collections conducted between 1/1/2021 and 5/31/2021. The Term duration can be modified through a mutually agreed amendment to this SOW.

## ADDITIONAL TERMS AND DISCLAIMERS

- You represent and warrant that you have obtained informed, voluntary consent for all Registrants to participate in the COVID-19 testing described in this SOW. You are responsible for obtaining and retaining copies of all signed consent forms, but do not need to deliver signed consent forms to JCMA or to the Lab. If JCMA or the Lab provides you with one or more sample consent forms, you agree that neither JCMA nor the Lab provides any warranty or promises that this sample consent form is sufficient or appropriate, and you are solely responsible for obtaining legally sufficient consent and are advised to seek your own legal counsel for this purpose.
- JCMA works with the Lab to perform the testing described in this SOW. You acknowledge and agree that JCMA is providing management, planning, logistics and software platform services only, and that JCMA is not a lab and does not itself perform testing for SARS-CoV-2. While JCMA uses best efforts to vet, monitor, and evaluate partner labs, SARS-CoV-2 testing and related practices are rapidly changing.
- You agree to follow, and use best efforts to ensure that all Registrants follow, the sample collection and other testing protocols and procedures provided by JCMA and/or the Lab to you, as updated from time to time upon adequate advanced written notice to you.
- Test results are not guaranteed. False negatives and false positives may occur. The accuracy of SARS-CoV-2 testing is dependent on both the quality of the samples collected and the timing of the sample collection in relation to a current or prior infection, all of which are outside of JCMA's and the Lab's control.
- Neither JCMA nor the Lab is providing any medical advice. This test alone is not sufficient to detect or rule out the possibility that an individual registrant has been exposed to or is infected with SARS-CoV-2.

Type text here

## SERVICE LEVEL AGREEMENT

### SERVICE ASSUMPTIONS

Assumptions related to in-scope services and/or components include: N/A

### SERVICE AVAILABILITY

Coverage parameters specific to the service(s) covered in this Agreement are as follows:

Telephone support: 8:00 A.M. to 5:00 P.M. Monday – Friday E.S.T.

Email support: Monitored 8:00 A.M. to 5:00 P.M. Monday - Friday E.S.T.

JCMA will provide telephone and/or email support as needed outside of service hours and including weekends during Client's results and reporting periods.

### SERVICE REQUESTS

In support of services outlined in this Agreement, the Service Provider will respond to service-related incidents and/or requests submitted by up to three (3) designated contacts at Client within the following time frames:

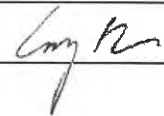

- 0-8 hours (during business hours) for issues classified as High priority.
- Within 2 business days for issues classified as Medium priority.
- Within 5 business days for issues classified as Low priority.

"High Priority" issues are failures of the Services or JCMWorks which affect all or substantially all Users and that have a significant operational impact on Client (e.g., the JCMWorks Platform is not functional)

"Medium Priority" issues are failures of the Services or JCMWorks that do not have a significant operational impact on Client, either because they affect only a few Users, or because they involve only a small portion of the Services or JCMWorks Platform.

"Low Priority" means requests for enhancements or cosmetic changes.

IN WITNESS WHEREOF, the parties have each caused this SOW to be signed and delivered by its duly authorized representatives, all as of the Effective Date.

| JCM Analytics LLC       |   | Rowan University        |   |
|-------------------------|---|-------------------------|---|
| Name:<br>(Please Print) | Corey Palermo, Ph.D.  | Name:<br>(Please Print) | Theresa Lew   |
| Title:                  | CEO   | Title:                  | AVP Finance & Controller  |
| Date:                   | 1/1/2021  | Date:                   | Jun 10, 2021  |
| Signature:              |  | Signature:              | <br><small>Theresa Lew (Jun 10, 2021 11:42 EDT)</small> |



# APPENDIX A

## COVID-19 TEST MANAGEMENT AND TESTING COSTS

| Item  | Quantity | Units             | Unit Cost | Total Cost | Notes  |
|---|----------|-------------------|-----------|------------|--|
| Pooled testing lab costs                                    | 1980     | pools             | \$122     | \$241,758  | Weekly testing of approximately 2100 people per week late-January through mid-May (15 weeks). Assumes an average pool size of 16. High positive rates may affect this recommendation. Billing is based on actual pools used. |
| Sample collection kits                                      | 33075    | kits              | \$3.36    | \$111,058  | Pre-packaged sample collection kits, including 5% overage. Billing is based on actual kits shipped.  |
| Estimated reflex testing of positive pools                  | 448      | diagnostic tests  | \$78      | \$34,810   | This assumes a low baseline infection rate and effective pooling for shared risk. Billing is based on actual reflex tests conducted.   |
| Initial onboarding, training, and support                   | 1        | month             | \$5,138   | \$5,138    | One-time charge for onboarding, training, and support during initial month of service.   |
| Program management, technical support, data analysis        | 4        | months            | \$3,865   | \$15,460   | Ongoing program support beyond initial month   |
| JCMWorks data management, reporting, and lab reconciliation | 4200     | users/month       | \$2.44    | \$51,282   | Billing is based on the actual number of unique users who submit a sample each month   |
| Barcode scanners  | 9        | barcode scanners  | \$122     | \$1,068    | Barcode scanners for collection kiosks   |
| Optional: Health worker support                             | 15       | collection events | \$5,189   | \$77,839   | Optional medical staff to observe collection and/or supervise kiosks during collection events.   |

|   |  |  |  |                 |   |
|---|--|--|--|-----------------|---|
| <b>Total Estimated Costs, including estimates for reflex testing</b>                                |  |  |  | \$460,573       | This number includes costs for reflex testing which may not be needed, or which may exceed the estimated amount |
| Total estimated costs not including reflex testing, assuming reflex testing will occur if necessary |  |  |  | \$425,764       |   |
| <b>Cost per individual reflex test</b>  |  |  |  | <b>\$78</b>     |   |
| <b>Savings per event skipped</b>  |  |  |  | <b>\$23,521</b> |   |
|   |  |  |  |                 |   |
| <b>Payment schedule</b>   |  |  |  |                 | Optional costs not included.  |
| Initial payment on signing  |  |  |  | \$34,176        |   |
| Monthly   |  |  |  | \$15,573        |   |
| Per test event, billed monthly  |  |  |  | \$23,521        |   |
| Per individual reflex test, billed monthly  |  |  |  | \$78            |   |

| Group                               | Total Count | Pool size | Number of pools | Unit cost/kit | Kit cost/pool | Analysis cost/pool | Total cost/pool | Total Cost |
|-------------------------------------|-------------|-----------|-----------------|---------------|---------------|--------------------|-----------------|------------|
| Athletes                            | 25000       | 16        | 1563            | \$3.36        | \$54          | \$122              | \$176           | \$274,463  |
| Theater                             | 5000        | 16        | 313             | \$3.36        | \$54          | \$122              | \$176           | \$54,963   |
| Total cost of special purpose pools |             |           |                 |               |               |                    |                 | \$329,426  |

*Note:* Kit cost/pool assumes 16 kits/pool, additional kits billed at unit cost/kit. Management and JCMWorks fees have been waived for special purpose pools. Reflex tests not included in total cost, billed at \$78/test.

Client shall pay JCMA initial payment at the time of contract execution. All remaining fees will be calculated and invoiced monthly. Invoices are due within fifteen (15) days from receipt. Client will advise JCMA monthly of the number of sample collection kits needed for the following month, which amount will take into account any unused sample collection kits from the prior month.

Client may terminate this Statement of Work without cause by giving thirty (30) days' written notice of termination to JCMA. JCMA may terminate this Statement of Work without cause by giving thirty (30) days' written notice of termination to Client.

Client may suspend the service agreement by giving 30 days' notice. During the suspension period Client will be charged fixed costs only (e.g., platform, program management) and will not be charged variable costs (i.e., lab, sample collection kits).

## **ROWAN UNIVERSITY TERMS AND CONDITIONS**

The following terms and conditions apply to all contracts or purchase agreements made with Rowan University unless specifically deleted on the University's proposal form. Vendors submitting offers to the University must cross out any paragraphs with terms they do not agree to meet. Any cross-out or change in the University's terms and conditions will be a determining factor in the award of a contract or purchase agreement. Bidders are notified by this statement that all terms and conditions will become a part of any contract(s) or order(s) awarded, as a result of the request for proposal, whether stated in part, in summary or by reference. In the event of a conflict between the vendor and the University's terms and conditions, the University's terms and conditions shall prevail.

### **I. STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL VENDORS**

- A. CORPORATE AUTHORITY** It is required that all corporations be authorized to do business in the State of New Jersey. Corporations incorporated out of the State must file a Certificate of Authority with the Secretary of State, Department of State, State House, Trenton, New Jersey. Refer to N.J.S.A. Title 14A, Chapter 13.3.
- B. ANTI-DISCRIMINATION** All parties to any contract with Rowan University agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained with N.J.S.A 10:2.1 through 10:2-4, N.J.S.A. 10:5-31 through 10:5.38, and all rules and regulations issued including any amendments to these laws.
- C. PREVAILING WAGE ACT** The New Jersey Prevailing Wage Act P.L. 1963, Chapter 150 is hereby made a part of every contract entered into on behalf of Rowan University, except those contracts which are not within the contemplation of the Act. The Bidder's signature on this proposal is his guarantee that neither he nor any subcontractors he might employ to perform the work covered by this proposal are listed or are on record in the Office of the Commissioner of the Department of Labor and Industry as one who has failed to pay prevailing wages in accordance with the provisions of this Act.
- D. THE WORKER AND COMMUNITY RIGHT TO KNOW ACT** (P.L. 1983, c.315; N.J.S.A 34:a-1 et seq.) required employers to label all containers of hazardous substances by March 29, 1985. By August 29, 1986, employers must have labeled all containers on their premises. Proper compliance shall be deemed a term and condition of any University purchasing contract.
- E. OWNERSHIP DISCLOSURE** Contracts for any work, goods, or services cannot be issued to any firm unless prior to or at the time of bid submission the firm has disclosed the names and addresses of all its owners holding 10 percent or more of the firm's stock or interest. Refer to N.J.P.L 1977, Chapter 33.
- F. COMPLIANCE-STATE LAWS** It is agreed and understood that any contracts and/or orders placed as a result of this proposal shall be governed and construed and rights and obligations of the parties hereto shall be determined in accordance with the laws of the STATE OF NEW JERSEY.
- G. COMPLIANCE LAWS** The vendor must comply with all local, state, and federal rules and regulations applicable to this contract and to the work to be done hereunder.

### **II. LIABILITIES**

- A. LIABILITY COPYRIGHT** The Contractor shall hold and save Rowan University and its officers, agents, students, servants, and employees, harmless from liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of his contract.
- B. INDEMNIFICATION** The contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless Rowan University, its officers, agents, students, servants, and employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith on account of the loss of life, property, injury or damage to the person, body or property of any person or persons whatsoever, which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract. This indemnification obligation is not limited by, but is an addition to, the insurance obligations contained in this agreement.
- C. INSURANCE** The successful bidder shall secure and maintain in force for the term of the contract liability insurance as provided herein. The successful bidder shall provide Rowan University with current certificates of insurance for all coverage and renewals thereof which must contain the provision that the insurance provided in the certificate shall not be cancelled for any reason except after thirty days written notice to the Purchasing Department of Rowan University.  
The insurance to be provided by the successful bidder shall be as follows:
  - 1. Current State of New Jersey standard comprehensive General Liability policy, not to be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include an endorsement (broad form) for contractual liability and products liability (completed operations). Limits of liability shall not be less than \$1,000,000 per occurrence for bodily injury and \$1,000,000 per occurrence for property damage liability.
  - 2. Comprehensive General Automobile Liability policy covering owned, non-owned, and hired vehicles with minimum limits of \$1,000,000 combined single limits.
  - 3. Worker's Compensation Insurance applicable to laws of the State of New Jersey and Employers' Liability Insurance with a limit of not less than \$1,000,000.

Upon request, the successful contractor will provide certificates of such insurance to the Purchasing Department of Rowan University, prior to the start of the contract and periodically during the course of a multi-year contract.

**III. TERMS GOVERNING ALL PROPOSALS TO ROWAN UNIVERSITY PURCHASING DEPARTMENT** (Unless Otherwise Specified in Bid Specifications)

- A. CONTRACT AMOUNT** The estimated amount of the contract(s), as stated in Rowan University's Advertised Bid Proposal Form, shall not be construed as either the maximum or the minimum amount which the University shall be obligated to order as the result of this proposal or any contract entered into as a result of this proposal.
- B. CONTRACT PERIOD AND EXTENSION OPTION** If, in the opinion of the University's Purchasing Director, it is in the best interest of the University to extend any contracts entered into as a result of this proposal for a period of all or any part of a year, the contractor will be so notified of the University's Purchasing Director intent at least 30 days prior to the expiration date of the existing contract. If the extension is acceptable to the contractor, at the original prices and on the original terms, notice will be given the contractor by the University's Purchasing Director in writing. In such cases a net Performance Bond must be submitted by the contractor on a prorata basis of the original Performance Bond to cover the period of the extension, at the sole discretion of the University.
- C. UNIVERSITY RIGHT TO REJECT ALL BIDS** The University reserves the right to reject any or all bids, or to award in whole or in part if deemed to be in the interest of the University. In the case of tie bids orders shall be awarded to the vendor or vendors best meeting all specifications and conditions.
- D. VENDOR RIGHT TO PROTEST-INTENT TO AWARD** Except in cases of emergency, bidders have the right to protest the University's proposed award of the contractor as announced in the notice of intent to award. Unless otherwise stated, a bidder's protest must be received no later than 48 hours after the date on the notice of intent to award. In cases of emergency, the University may eliminate the right to protest. Bidder's protest must be in writing and delivered to the University's Purchasing Director. The protests must include the specific grounds for challenging the award. Within one week of receipt of the written protest, the University's Purchasing Director shall give written notification of the University's acceptance or rejection of the protest. In cases of rejection, the Bidder has the right to request a hearing. Such request must be made within 48 hours of the date of notice of rejection. If a hearing is requested, the University's Purchasing Director will schedule it and send written notice to the Bidder no later than one week prior to the date scheduled for the hearing. The University's approved hearing officer will preside at the hearing and may call any person he/she deems necessary to testify. Should the Bidder fail to attend, it shall be considered a retraction of his protest. The University's hearing officer shall render the University's decision within one week of the end of the hearing and give a written copy to the Bidder.
- E. TERMINATION OF CONTRACT**
  - 1. Change of Circumstances**—Where circumstances and/or the needs of the University significantly change, or the contract is otherwise deemed no longer to be in the public interest, the University's Purchasing Director may terminate a contract entered into as a result of this bid, upon no less than 30 days notice to the vendor and an opportunity to respond.
  - 2. For cause:**
    - a.** Where a vendor fails to perform or comply with a contract, and fails to respond or comply with the written complaint of the University Purchasing Director, the University Purchasing Director may terminate the contract upon 10 days notice to the vendor with an opportunity to respond.
    - b.** Where a vendor continues to perform a contract poorly as demonstrated by formal complaints, late delivery, poor performance of service, short-shipping, etc. so that the University Purchasing Director is repeatedly required to issue written complaints, the University Purchasing Director may terminate the contract upon 10 days notice to the vendor with an opportunity to respond. In cases of emergency the University Purchasing Director may shorten the time periods of notification and may dispense with an opportunity to respond.
- F. SUBCONTRACTING OR ASSIGNMENT** The contract may not be sub-contracted or assigned by the contractor, in whole or in part, without the prior written consent of the Rowan University Purchasing Director. Such consent, if granted, shall not relieve the contractor of any of his responsibilities under the contract. In the event that bidder proposes to subcontract the services to be performed under the terms of the contract award, he shall state so in his bid and attach for approval a list of said subcontractors and an itemization of the services to be supplied by them. Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the University.
- G. PERFORMANCE GUARANTEE OF BIDDER** The bidder hereby certifies that: The equipment offered is standard new equipment, and is the manufacturer's latest model in production with parts regularly used for the type of equipment offered, that such parts are all in production and not likely to be discontinued; also, that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice.
  - 1.** All equipment supplied to the University and operated by electrical current is UL listed.
  - 2.** All new machines are to be guaranteed for a period of one year from time of delivery and/or installation and prompt service rendered without charge, regardless of geographic location.

3. Sufficient quantities of parts necessary for proper service to equipment will be maintained at distribution points and service headquarters.
  4. Trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within 48-hour period or within the time accepted as industry practice.
  5. The contractor shall immediately replace any material, which is rejected for failure to meet the requirements of the University.
  6. All services rendered to the University shall be performed in strict and full accordance with the specifications as agreed to in the contract. A service contract shall not be considered complete until final approval by the University is rendered. Payment to vendors for such services rendered may not be made until final University approval is given.
- H. DELIVERY GUARANTEES** Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the proposal. The vendor shall be responsible for the delivery of material in first class condition to the University in accordance with good commercial practice. Items delivered must be strictly in accordance with bid specifications.
1. In the event delivery of goods or services is not made within the number of days stipulated under the schedule defined in the specifications, the University may at its option obtain the material or service from any available source, the difference in price, if any, to be paid by the contractor failing to meet his commitments.
- I. BID ACCEPTANCES AND REJECTIONS** Bids shall be automatically rejected for any of the following causes:
1. No signature in the bid document;
  2. Bids received after date and time specified on bid request form;
  3. Bid fails to provide price information;
  4. Failure to provide required security;
  5. Failure to attend a mandatory Bidder's conference or site inspection;
  6. Failure to initial any alteration of essential information such as price;
  7. Essential information such as price and product descriptions submitted only in pencil;
  8. Failure to comply with State of New Jersey Affirmative Action Guidelines promulgated pursuant to Chapter 127.P.L. 1975.
- J. UNIVERSITY'S RIGHT TO INSPECT BIDDER'S FACILITIES** The University reserves the right to inspect the bidder's establishment before making an award.
- K. MAINTENANCE OF RECORDS** The contractor shall maintain records for products and/or services delivered against the contract for a period of three (3) years from the date of final payment. Such records shall be made available to the University upon request.

#### **IV. TERMS RELATING TO PRICE QUOTATION**

- A. PRICE FLUCTUATIONS DURING CONTRACT** All prices quoted shall be firm and not subject to increase during the period of the contract unless agreed to in writing by the University.
1. In the event of a manufacturer's price decrease during the contract period, the University shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the contract period. The University must be notified in writing of any price reduction within five (5) days of the effective date.
- B. DELIVERY COSTS** Unless noted otherwise in the specification, all prices for items in bid proposals are to be submitted F.O.B. Destination. Proposals submitted other than F.O.B. Destination may not be considered. Regardless of the method of quoting shipments, the vendors shall assume all liability and responsibility for the delivery of merchandise in good condition to the University unless otherwise specified. Unless otherwise specified, F.O.B. Destination does not cover "spotting" but does include delivery on the receiving platform of the University or the designated receiving points indicated on the Purchase Order. No additional charges will be allowed for any transportation costs resulting from partial shipments made a vendor's convenience when a single shipment is ordered. The weights and measures of the University shall govern.
- C. C.O.D. TERMS** Unless otherwise stated in the Request for Proposal, C.O.D. Terms are not acceptable as part of a bid proposal and are cause for automatic rejection of a bid.
- D. TAX CHARGES** The University is exempt from State sales or use taxes and Federal excise taxes. They must not be included in the vendor's price quotations.
- E. PAYMENT TO VENDORS** Payments for goods and/or services purchased by the University will be made only against the Contractor's Invoice. The contractor's Invoice in duplicate together with original Bill of Lading, express receipt and other related papers must be sent to the University on the date of each delivery.
- V. CASH DISCOUNTS** Cash discounts for periods of less than 10 days will not be considered as factors in the award of contracts for purposes of determining the University's compliance with any discount offered.
- A. A discount period shall commence on the day the University receives a properly executed Contractor's Invoice for products and services that have been duly accepted by the University in accordance with the terms, conditions, and specifications of

the Contract/Purchase Order. If the invoice is received prior to delivery of the goods and services, the discount period begins with the acceptance of the goods or services.

- B. The date on the check issued by the University in payment of that invoice shall be deemed the date of the University's payment of that invoice.

#### **VI. HAZARDOUS MATERIALS**

REFERENCES: 29 CFR 1910, SUBPART H AND PART .1200 NJAC TITLE 9, Chapter 59 et. al.

- A. All hazardous materials used on the campus by any contractor are required to have a Material Safety Data Sheet (MSDA) filed with the Safety Office.
- B. All hazardous materials left on-site and not consumed or used by the end of the daily work shift by a contractor's crew must be labeled and marked in accordance with the appropriate sections of the New Jersey Worker and Community Right-to-Know Act.
- C. In summary, this act required labels identifying the top five constituents of a product, hazardous or non-hazardous, by common chemical name and Chemical Abstract Service (CAS) Number.
- D. Most products manufactured or packaged outside of New Jersey do not meet this requirement without additional action on the part of the end item user or consumer.
- E. All requirements of the United States Environmental Protection Agency (US EPA) as outlined in 40 CFR must also be complied with. STORAGE ON SITE/CAMPUS: All hazardous materials stored on site or on campus must be secured to prevent unauthorized use or contact with campus affiliates or the general public. In addition, all stoppage must meet the technical requirements of the NJ DEP or DCA, or the University; whichever is more stringent.
- F. **DISPOSAL:** All contractor owned or furnished residue or surplus hazardous material must be removed from the campus immediately after being classified as "waste", or when they are no longer usable for the project they were brought on to the campus to support. The University will not accept any hazardous materials for disposal or storage for any reason at anytime from any contractor.
- G. For additional information contact the University Safety Office.

#### **VII. RIGHT TO AUDIT**

Pursuant to N.J.A.C. 17:44-2.2, Rowan University and the State, including the Office of the Comptroller, has the authority to audit or review contract records that are relevant records of private vendors or other persons entering into contracts with covered entities are subject to audit or review by OSC pursuant to N.J.S.A. 52:15C-14(d).

#### **VIII. MAINTENANCE OF RECORDS**

The vendor shall maintain records for products and/or services delivered against the contract for a period of five (5) years from the date of final payment unless otherwise specified in the bid. Such records shall be made available to the University and the State, including the Comptroller, for audit and review.

- IX. **EXECUTIVE ORDER NO.166** Pursuant to Executive Order No. 166, signed by Governor Murphy on July 17, 2020, the Office of the State Comptroller is required to make all approved State contracts for the allocation and expenditure of COVID-19 Recovery Funds available to the public by posting such contracts on a State website. Such contracts will be posted on the New Jersey transparency website developed by the Governor's Disaster Recovery Office (GDRO Transparency Website). Accordingly, the OSC will post a copy of the Contract, including the winning Bidder's proposal and other related Contract documents for the above Contract on the GDRO Transparency website.

#### **X. DIANE B. ALLEN EQUAL PAY ACT**

- A. Any employer, regardless of the location of the employer, who enters into a contract with a public body to provide qualifying services to the public body shall provide a report to the Commissioner of Labor and Workforce Development, in a form issued by regulation promulgated by the commissioner, of information regarding the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category. Data regarding compensation and hours worked by employees shall be reported in the form by pay bands to be established by regulation promulgated by the commissioner. The commissioner may establish a standard presumption for the number of hours worked by a fulltime employee or by a part-time employee for whom an employer does not track actual hours worked. An employer shall provide a report for each establishment of the employer.
- B. Any employer, regardless of the location of the employer, who enters into a contract with a public body to perform any public work for the public body shall provide to the commissioner, through certified payroll records required pursuant to P.L.1963, c.150 (C. 34:11-56.25 et seq.), information regarding the gender, race, job title, occupational category, and rate of total compensation of every employee of the employer employed in the State in connection with the contract. The employer shall



provide the commissioner, throughout the duration of the contract or contracts, with an update to the information whenever payroll records are required to be submitted pursuant to P.L.1963, c.150 (C. 34:11-56.25 et seq.).

- C. The commissioner shall retain the information provided by the employer during any period of time that one or more contracts are in effect between the employer and any public body and not less than five years after the end of that period. The retained employment information shall be made available by the commissioner to the Division on Civil Rights in the Department of Law and Public Safety, and, upon request, provided to anyone who is or was an employee of the employer during the period of any of the contracts between the employer and any public body, or any authorized representative of the employee.
- D. For the purposes of the section:
  - 1. "Public body" means the State or any agency or instrumentality of the State;
  - 2. "Public work" means public work as defined in section 2 of P.L.1963, c.150 (C. 34:11-56.26) and which is subject to the provisions of P.L.1963, c.150 (C. 34:11-56.25 et seq.). Public work shall not include the provision of goods or products.
  - 3. "Qualifying services" means the provision of any service to the State or to any other public body, except for public work as defined in section 2 of P.L.1963, c.150 (C. 34:11-56.26).
  - 4. "Service" means any act performed in exchange for payment, including the provision of professional services, but shall not include the sale of goods or products.

(Continued on Page 6)

## **PURCHASES FUNDED, IN WHOLE OR IN PART, BY FEDERAL FUNDS**

The provisions set forth below apply to all purchases funded, in whole or in part, by Federal funds as required by 2 CFR 200.317.

### **I. CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS.**

Pursuant to 2 CFR 200.321, the State must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Accordingly, if subawards are to be made the Contractor shall:

- A. Include qualified small and minority businesses and women's business enterprises on solicitation lists;
- B. Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- C. Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- D. Establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and,
- E. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

### **II. DOMESTIC PREFERENCE FOR PROCUREMENTS**

Pursuant to 2 CFR 200.322, where appropriate, the State has a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). If subawards are to be made the Contractor shall include a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). For purposes of this section:

- A. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- B. "Manufactured products" means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

### **III. PROCUREMENT OF RECOVERED MATERIALS**

To the extent that the scope of work or specifications in the contract requires the contractor to provide any of the following items, this Section 7.1 of the Standard Terms and Conditions modifies the terms of the scope of work or specification.

Pursuant to 2 CFR 200.322, the contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$ 10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$ 10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- A. Designated items are those set forth in 40 CFR 247 subpart B, as may be amended from time to time, including:
  1. Paper and paper products listed in 40 C.F.R. 247.10;
  2. Certain vehicular products as listed in 40 CFR 247.11;
  3. Certain construction products listed in 40 C.F.R. 247.12;
  4. Certain transportation products listed in 40 C.F.R. 247.13;
  5. Certain park and recreation products, 40 C.F.R. 247.14;
  6. Certain landscaping products listed in 40 C.F.R. 247.15;
  7. Certain non-paper office products listed in 40 C.F.R. 247.16; and
  8. Other miscellaneous products listed in 40 C.F.R. 247.17
- B. As defined in 40 CFR 247.3, "recovered material" means:
  1. waste materials and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process; and
  2. for purposes of purchasing paper and paper products, means waste material and byproducts that have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process. In the case of paper and paper products, the term recovered materials includes:

- a. Postconsumer materials such as -
  - i. Paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; and
  - ii. All paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste, and
- b. Manufacturing, forest residues, and other wastes such as -
  - i. Dry paper and paperboard waste generated after completion of the papermaking process (that is, those
  - ii. manufacturing operations up to and including the cutting and trimming of the paper machine reel in smaller rolls of rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and
  - iii. Finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;
  - iv. Fibrous byproducts of harvesting, manufacturing, extractive, or wood-cutting processes, flax, straw, linters, bagasse, slash, and other forest residues;
  - v. Wastes generated by the conversion of goods made from fibrous material (that is, waste rope from cordage manufacture, textile mill waste, and cuttings); and
  - vi. Fibers recovered from waste water which otherwise would enter the waste stream.
- C. For contracts in an amount greater than \$ 100,000, at the beginning of each contract year, contractor shall provide the State estimates of the total percentage of recovered material utilized in the performance of its contract for each of the categories listed in subsection (A). For all contracts subject to this Section 7.1 of the Standard Terms and Conditions, at the conclusion of each contract year, contractor shall certify to the State the minimum recovered material content actually utilized in the prior contract year.

#### **IV. EQUAL EMPLOYMENT OPPORTUNITY**

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

During the performance of this contract, the contractor agrees as follows:

- A. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- D. The contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations,

and relevant orders of the Secretary of Labor.

- F. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with 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.
- H. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, 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 administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

**V. DAVIS-BACON ACT, 40 U.S.C. 3141-3148, AS AMENDED**

When required by Federal program legislation, all prime construction contracts in excess of \$ 2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be 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 or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

**VI. COPELAND ANTI KICK-BACK ACT**

Where applicable, the Contractor must comply with Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

- A. Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into the OGS centralized contract.
- B. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- C. Breach. A breach of the clauses above may be grounds for termination of the OGS centralized contract, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12.

**VII. CONTRACT WORKHOURS AND SAFETY STANDARDS ACT, 40 U.S.C. 3701-3708**

Where applicable, all contracts awarded by the non-Federal entity in excess of \$ 100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not 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. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**VIII. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

**IX. CLEAN AIR ACT, 42 U.S.C. 7401-7671Q, AND THE FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. 1251-1387, AS AMENDED**

Contracts and subgrants of amounts in excess of \$ 150,000 must contain a provision that requires the non-Federal award to agree 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). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**X. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689)**

A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

**XI. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. 1352**

Contractors that apply or bid for an award exceeding \$ 100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

**XII. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

- A.** Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
- 1.** Procure or obtain;
  - 2.** Extend or renew a contract to procure or obtain; or
  - 3.** Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
    - a.** For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
    - b.** Telecommunications or video surveillance services provided by such entities or using such equipment.
    - c.** Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.