

University of the South Standard Contract Terms and Conditions

The University of the South (University) is a private, not-for-profit, four year liberal arts institution, founded in 1857, incorporated by the state of Tennessee in 1947, realizing tax exempt status under Internal Revenue Service Code, Section 501(a), as an organization described in section 501(c)(3). Listed below are the Standard Contract terms and conditions of the University.

Acceptance: These Contract terms and conditions are deemed to have been accepted by the Contractor if any of the following occur: (a) shipment of the products or any portion thereof, (b) commencement of any work on site or (c) performance of any services hereunder. Any discrepancies in fulfilling the terms of the Contract must be resolved between the University and Contractor prior to the start of work, delivery of any service or commodity to the University. Terms and Conditions of existing contracts supersede any conflicting Contract Terms and Conditions. All other Terms and Conditions apply.

Advertisements: Unless specifically authorized in writing by the University, the Contractor will have no right to use, and will not use, the name or any marks of the University, its regents, trustees, officials or employees, or the Seal of the University a) in any advertising, publicity, promotion, or b) to express or imply any endorsement of Contractor's products or services.

Assurance: If at any time, the University in good faith determines that it questions Contractor's ability or intent to perform, and then Contractor agrees to provide the University with written assurance of Contractor's ability and intent to perform. Contractor shall immediately notify the University if the Contractor fails to perform. Upon the University's good faith determination that Contractor cannot or will not perform, then the University may deem this PO breached by the Contractor and the University may cancel this PO, and/or may re-procure from other sources.

Authorization: The University requires that the authorized representatives for the Contractor and the University sign this agreement prior to performing the service or work.

Commence to Work: Contractor shall commence work at the site upon notification from the Owner and perform the same at such times and places as designated by the Owner. Time is of the essence for Contractor's performance.

Compliance: Contractor will strictly comply with all applicable federal and state laws, rules, codes, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices. The Contractor shall indemnify the Owner for all expenses incurred by the Owner for fines, penalties or corrective measures resulting from acts or failures to act of the Contractor, its subcontractors, agents and employees for failure to comply with such laws, rules and regulations.

Conduct of Personnel: While at any University location, Contractor's personnel, agents, and subcontractors are required, comply with all reasonable requests, standard rules, and regulations of the University. Contractor's personnel, agents, and subcontractors will be required to conduct themselves in a professional manner including without limitation any security or privacy requirements, harassment of any nature.

Confidentiality: Proposal submissions are confidential. The University is not required to disclose contracts, RFP documents, proposals or other information to outside parties. The University will decline all requests for access to confidential materials. The University requires all Contractors to maintain the confidentiality of all materials and correspondence with the University regardless of whether or not any actual business occurs. The University assumes no liability for any loss or damage that may result from the University's disclosure of any information provided by the respondent in connection with its proposal. The University and the Contractor will take reasonable steps to protect confidential information.

Conflict of Interest: Contractor represents and warrants that none of its principals, nor any employee or subcontractor of a Vendor performing the Services, is a faculty member, employee, student, or agent of the University. Neither Vendor, nor any of its principals, or any of its employees or subcontractors performing the Services, has a personal or other business relationship with any University department participating in this Agreement or authorizing the payment of the Services under this Agreement. The Contractor agrees to comply fully with the applicable provisions of state and local laws related to conflicts of interest. The Contractor agrees to follow the University conflicts of Interest Policy.

Contract Administrator: After award of this contract, (Individual Responsible for the contract), will be the authorized representative in all matters pertaining to the administration of the terms and conditions of this contract. The Contractor will send all notices and invoices to the Contract Administrator. The University Treasurer, Director of Business Services or Purchasing Office are the only individuals who can make any amendments or financial modifications to a contract. The successful Contractor will be responsible for coordinating all matters pertaining to the resulting contract with the University's Contract Administrator.

Contract Duration: The terms of the contract will begin and end on the specific dates on the contract. The University can extend or terminate the contract in accordance with the provisions in the contract.

Contractor Expenses: The Contractor is solely responsible for arranging to pay all expenses for services and equipment incurred in connection with this Contract. The Contractor is responsible for all employee and employer related expenses.

Correspondence: Please direct all correspondence in regards to the Contract referenced to the originator. Please mail or email to the originator.

Data and PCard Data Security: Contractor agrees to handle data and other information ("Data") securely. Contractor will not copy, cause to be copied, use or disclose Data received from or on behalf of the University except as permitted or required by the Contract. Contractor will give immediate notice to the University of any actual or suspected unauthorized disclosure of, access to or other breach of the Data. In the event of actual or suspected

unauthorized disclosure of, access to, or other breach of the Data, Contractor will comply with all state and Federal laws and regulations related to such breach, and will cooperate with the University in fulfilling its legal obligations.

Definitions:

"Agreement" means the terms and conditions contained in the contract;

"Amendment" means the standard form amendment used by the University, as amended from time to time, which sets out changes or modifications to an existing Contract;

"Contract" means the standard form contract used by the University, as amended from time to time, which sets out information relevant to the purchase, including the Contractor, the nature of the Purchased Goods/Services, and the associated cost;

"Purchased Goods/Services" means the good and/or services which are the subject matter of the Contract, as more specifically described in the Contract;

"Contractor" means the corporation, sole proprietorship, partnership, joint venture or individual listed on the face of the Contract as the independent Contractor providing the Purchased Goods/Services; and

"University" means the University of the South (University).

Delivery: Contractors ship the products to the University within the time requirements and economically, "F.O.B Destination, Freight Prepaid and Added." The University reserves the right to cancel this order or any portion of the order if delivery does not meet the stated requirements. The University charges the Contractor for any loss sustained because of such cancellation including, but not limited to, shipping charges. The Contractor is responsible for any loss or expense sustained due to failure to start or deliver as promised.

Documentation: The Contractor maintains documentation for all charges against the University under this Contract. For a period of three (3) full years from the date of the final payment, the Contractor maintains books, records and documents of the Contractor, as they relate to work performed or money received under this Contract. The records are subject to audit, at any reasonable time and upon reasonable notice, by the University or their duly appointed representatives. The Contractor maintains the records in accordance with generally accepted accounting principles. Contractor must maintain maintenance records for a period of seven (7) years and be made available to the University upon request.

Electronic/Facsimile Transmission: The transmission of this Contract by fax or by other electronic means shall have the legal significance of a duly executed original delivered to the Contractor.

Entire Agreement: This Agreement shall constitute the entire agreement between the parties for the services set forth in the Contract. Together with the terms and conditions on any attached schedules and the attached Contract form the entire agreement between the University and the Contractor. There are no representations, or promises, express or implied, other than those contained in this Agreement. The University is not bound by any other terms, absent a written modification or other agreement signed by the parties. Acceptance of this Contract constitutes acceptance of all conditions herein stated. The appropriate University authorized official approves and signs this contract before it becomes binding. A list of the University's authorized officials is located here: <https://www.sewanee.edu/media/provost/Contract-Policy.pdf>.

Environmental Sustainability: The University is committed to implementing sustainability practices across all facets of campus life and institutional practices. Our University strategic plan calls for us to be a national leader in sustainability and the supply chain is an important aspect of this commitment.

Equipment: If Owner provides any special scaffolding, hoists or elevator service for raising the Contractor's employees or other personnel or materials, then it shall be at the sole risk and responsibility of the Contractor and or the employees of the Contractor.

Financial: Contractor hereby agrees to make prompt payment to all parties furnishing labor, materials or equipment to the Contractor in the prosecution of the work hereunder and that such prompt payment is of the essence of this Contract. In the event the Contractor or its subcontractors or materialmen or any party acting through or under it or them fails to pay any sum of money due any party furnishing labor, material or equipment hereunder, the Owner is hereby authorized to retain out of any payment due or to become due hereunder the unpaid sum and to pay same directly to the party to whom such sum is due if at any time there shall be evidence of any lien or claim for which, if established, the Owner might become liable and which is chargeable to the Contractor. The Owner shall have the right to retain out of any payment due or to become due hereunder an amount sufficient to completely indemnify the Owner against such lien or claim. The provisions of this paragraph shall not require the Owner to determine or adjust any claims or disputes between those parties furnishing labor, material or equipment hereunder or to withhold any money for their protection, nor shall the Owner be liable to any party for its failure to do so.

The Contractor, for the price provided in this Contract, hereby accepts and assumes full and exclusive liability for and indemnify and save the Owner harmless against the payment of any and all taxes and contributions or premiums for unemployment insurance, worker's compensation, wages, salaries, and other remuneration of employees by whoever employed or engaged in the performance of the work included in this Contract and all sales, use or other taxes levied or assessed against the Owner or Contractor arising out of the Contractor's work including, but not limited to, taxes on any kind of materials, articles or equipment. The Owner may request from the Contractor evidence satisfactory to the Owner that all obligations contained within this paragraph are complete prior to final payment.

Force Majeure: Neither party will be held responsible for any delay or failure in performance of any part of this Contract to the extent such delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, pandemic, act of God, or other similar causes beyond its control and without the fault or negligence of the delayed or non-performing party. The affected party will notify the other party in writing within ten (10) days after the beginning of any such cause that would affect its performance. Notwithstanding, if a party's performance is delayed for a period exceeding 30 days from the date the other party receives notice under this paragraph, the non-affected party will have the right, without any liability to the other party, to terminate this Contract.

Gifts: The University will not accept any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind directly or indirectly to any employee, employee family member, or agent of the University for the purpose of improperly obtaining or receiving favorable treatment in connection with any Contract. The Contractor will verify that no employee or official of the University holds a controlling interest in the Contractor. The Contractor will not accept or try to obtain any special treatment from the University.

Governing Law: The laws of the State of Tennessee, federal, local, regulations, and ordinances applicable to the work performed govern this contract. The Contractor must at all times observe and comply with such laws, regulations, and ordinances.

Hazardous Materials: Any products deemed hazardous must be packaged, marked, and shipped by the Contractor to comply with all federal, state, and local regulations and common carrier requirements. Up to date Material Safety Data Sheets (MSDS) must accompany all products requiring one in accordance with current State of Tennessee and Federal laws, rules and regulations.

Indemnification: The Contractor agrees to indemnify and hold the University, its regents, trustees, officers, employees, and agents harmless from and against all liability, loss, claims, damages, expenses, or demands, including reasonable attorney's fees, which the University may incur or sustain by reason of the failure of the proposal to fully perform and comply with the terms and conditions of any contract. Further, the University assumes no liability for any damage to the property, or for personal injuries, illness, disabilities or deaths of the Contractor, Contractors employees or any other person subject to the Contractors control, or any other person including members of the general public, caused in whole or in part, by a) Contractors breach of any term or provision of the awarded contract; or b) any negligent or willful act or omission of the Contractor, its employees or subcontractors in the performance of the awarded contract.

Infringement: Contractor, at its expense, shall defend, indemnify and hold harmless the University, its regents, trustees, officers, employees, and students from all claims and demands made based on a claim that any products or Services furnished hereunder infringed a patent, copyright, trademark, service mark, trade secret, or other legally protected proprietary right. Contractor shall pay all costs, fees, and damages incurred by The University for any such claim or action or the settlement thereof. This provision shall survive the expiration of the Contract.

Inspection and Acceptance: All materials or services furnished must be as specified, in strict compliance with the agreement and contract documents (if any). All materials and services will be subject to inspection and approval by the University, architect, engineer or any other person or agency mentioned in the documents after delivery. The right is reserved to reject and return at the risk and expense of the Contractor any such portion of any shipment which may be in excess (except for customary quantity variations recognized by trade practice), defective or fail to comply with specifications without invalidating the remainder of the purchase order. In addition, all materials and services must comply with drawings, samples, or specifications and meet the highest professional standards. If the materials or services do not pass inspection, the University will cancel this agreement without further notice and without liability on the part of either the University or the Contractor. All deliverables shall be subject to inspection and acceptance testing. Upon completion of the work or the delivery of the equipment, service or product, the Contractor will deliver a written notice to the University certifying that the work, equipment, service, or product meets the specifications and requirements.

License: The agreement does not grant the Contractor a license or other right to duplicate or use any image or intellectual property of the University in any manner other than that which is in connection with the performance of the contract. Any such license to use the University's intellectual property must be contained in a signed writing.

Loss of Risk: Until accepted by the University as provided above, the Contractor shall bear all risk of loss and damage, unless such loss or damage results solely from the gross negligence or intentional misconduct of the University.

Material: Contractor hereby assigns title of all the materials, tools and equipment of the Contractor on Owner's premises and will finish the work by whatever method the Owner may deem expedient. Contractor cleans the work site and removes from the premises all debris caused by the execution of the work and will pay for any breakage or damage caused by the Contractor, its employees or subcontractors. Upon failure to remove debris or pay for such breakage or other damages, the Owner may remove said debris, replace property so damaged, and charge the cost thereof to the Contractor. The Contractor is required to follow the Risk Management policies and procedures.

Minimum Insurance Coverages and Requirements: The University reserves the right to require proof of insurance from Contractors. Proof of Insurance will be required for on-site and construction related service projects. Contractors shall bear the full cost of the required insurance. The Contractor is not relieved of any liability or other obligations assumed due to failure to obtain or maintain insurance in sufficient amounts, duration or types. Upon proposal award, Contractor must be able to provide a Certificate of Insurance per the Terms and Conditions below:

1. Workers' Compensation Required: Statutory Limits
2. Automobile: \$1,000,000, Combined Single Limit Liability and \$1,000,000, Hired Car/Non-Owned Liability
3. General Liability: \$1,000,000 General Aggregate, \$1,000,000 Products/Completed Operations, \$1,000,000 Personal and Adv. Injury, \$1,000,000 Each Occurrence, \$100,000 Fire Legal Liability, \$10,000 Medical Payments
4. Excess Liability: \$1,000,000 Each Occurrence, \$1,000,000 Aggregate

Worker's Compensation insurance and employer's liability insurance must cover all persons whom the Contractor may employ in carrying out the required services. Worker's compensation insurance will be in accordance with the Worker's Compensation Law of the State of Tennessee. Every Certificate must specifically state that the University is an additional insured, and every certificate must specify a 30-day notice for cancellation.

Modify or Change in Agreement: The University and the Contractor by written notice can modify or change an agreement if both parties agree to the change.

Non-Collusion: Signing of this proposal affirms that the Contractor has not been in any agreement, deception, improper conduct or collusion among Contractors. The Contractor nor any business represented by this Contractor has received compensation for preparation related to this contract. The Contractor refrains from proposing or hinders the process and freedom of competition. The Contractor commits to provide a sincere and authentic bid that meets the University's requirements.

Non-Discrimination: The University does not discriminate against Contractors based on any category protected by law, whether federal, state, or local ordinance. The University conducts business with sustainable small businesses in and around the community. The Contractor must comply with all applicable federal and state employment laws.

Order Changes: The University must approve, in writing, substitutions, alterations, additions, deletions, or charges for premium time to this Contract. Change Orders shall specify the amount of additional compensation or credit on the Contract and describe the related modification to the work.

Payment Discounts: The University will attempt to use cash discounts for prompt payment. The discount period will start from the date of delivery or date of receipt of correct invoice based on whichever is later.

Payment Terms & Invoices: Terms of payment unless otherwise stated in the Contract will be for one hundred percent (100%) of the Contract amount payable within thirty (30) days of the Owner's receipt of the Contractor's invoice upon completion of the work and acceptance of the work by the Owner. If Contractor fails to complete the work, it shall not be entitled to receive any payment under this Contract until the performance of the Contract has been completed by Owner or others, at which time if the unpaid balance due the Contractor exceeds the cost of completion said amount shall be paid the Contractor in full payment of any and all claims of the Contractor under this Contract. However, in the event the costs and expenses to complete the work exceed such unpaid balance of the Contractor, the Contractor (a) agrees that it is not entitled to any further payments hereunder of for any other claims it may have under this Contract and (b) agrees to assume entire responsibility and liability for and to indemnify and save harmless the Owner from such excess costs and expenses which shall include any and all costs and damages incurred through the default of the Contractor as well as consequential damages for delay or otherwise. The Contractor, as a condition precedent to any payment hereunder, furnishes all necessary releases, lien waivers, affidavits and other documents required by the Owner to keep the Owner's premises free from liens or claims for liens on all materialmen, subcontractors or laborers as well as complete waivers and releases of any and all claims of any party connected with or related to the performance of this Contract. Acceptance of final payment shall not be construed to be an acceptance by the Owner of defective work or improper materials. Mail or Email all invoices to: The University of the South, Attn: Accounts Payable, 735 University Avenue, Sewanee, TN 37383-1000.

Resolutions: If any product or service fails to conform to any warranties specified or otherwise applicable, the Contractor will replace or refund to the University any payment already made or at the University's option, repair or replace such item at Contractor's expense. The University has the right to reject a portion of the items purchased. A partial acceptance of the balance is not a waiver of any of the University's rights, claims or resolutions to additional claims available by law.

Right to Terminate: The University or Contractor may terminate the contract if either party breaches the approved provisions. The non-breaching party must give a 30 day written notice detailing the breach in reasonable detail. The non-breaching party has the right to terminate the contract by giving a 30 day written notice thereof to the party in breach. Termination of the contract will go into effect immediately upon receipt. In the event of termination, the Contractor shall take immediate steps to terminate the work as quickly and effectively as possible and terminate all commitments to third parties unless otherwise instructed by the Owner. If no damages are due to the Owner for Contractor's failure to perform in accordance with the Contract, the Owner shall pay the Contractor for all work performed to the date of termination, and the Owner shall have no further liability to the Contractor for termination.

The list of reason to terminate a contract are as follows:

1. The Purchased goods and services of the Contractor are unsatisfactory, inadequate or improperly provided
2. Contractor failed to comply with any term or condition in the Contract agreement
3. Contractor dissolves or becomes bankrupt during the Contract
4. Contractor's insurance coverage is cancelled, reduced or adversely changes during the Contract
5. A delay in performance or inability to complete the Contract Agreement
6. Contractor failed to provide services in a good and competent manner with reasonable skill level.

Amendment: A written amendment is required in order to amend this contract. The written amendments require the approval from the authorized officials of both parties.

Safety: The Contractor guarantees that the design and performance of all items purchased conform to the requirements of application and government health and safety regulations, including regulations administered by OSHA and the EPA. The Contractor must take all necessary precautions for the safety of the employees at work and must comply with all applicable provisions of Federal, State, and Municipal Safety Laws and Building Codes to prevent accidents or injury to persons on, or about, or adjacent to the premises where the work is being performed.

Standard Warranties: The Contractor hereby guarantees all labor, materials and work furnished hereunder against all defects that may develop within one (1) year from the date of acceptance by the Owner or within the guarantee period set forth in the Contract Documents, whichever is longer. All products provided shall be of good quality within the description given by the University. The products are fit for their ordinary purpose, adequately contained and packaged within the description given by the University. The products conform to the agreed upon specifications, and conform to the affirmations of fact made by the Vendor or on the container or label. When a Contractor has reason to know or knows any particular purpose for which the products are required and the University is relying on the Contractor's skill or judgement to select or furnish suitable products, there is a warranty that the products are fit for the application. Contractor provides good titles in those products, whose transfer is right and lawful. Contractor delivers products free from any security interest, lien, or encumbrance of which the University, at the time of contracting, has no knowledge. The Contractor delivers products that are free of any rightful claim of any third person by/of infringement or the like. If this Contract is for the provision of services, Contractor warrants that all services hereunder shall be performed by personnel experienced and highly skilled in their profession and in accordance with the highest applicable standards of professionalism for comparable or similar services. Contractor shall be responsible for the professional quality, timeliness, coordination and completeness of the services. Contractor personnel assigned to perform the services shall be as proposed by Contractor and approved by the University. Contractor utilizes only personnel required for the performance of the services who are qualified by education, training and experience to perform the tasks assigned to them. Contractor agrees to replace any of its employees whose work is unsatisfactory or contrary to the requirements of the services agreement. The University shall not supervise nor control the details of the Contractor's services, but rather be interested only in the results of the Contractor's services.

Tax Exemption: The University is exempt from Federal and State income, sales, and use taxes. The Contractor will ensure that the University receives the benefit of its tax exemption where applicable to the purchases. The University will provide a Tax Exemption Certificate to the Contractor or subcontractor. The State of Tennessee ID number is 100141464 and the Federal Tax ID number is 62-0475697.

Title: The University acquires the legal title to the products based on "FOB Destination" unless otherwise specified in the Contract.

Transfer: The Contractor agrees (a) not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the University and (b) that the Owner has the right to set off against any money due the Contractor under this Contract any claim or claims against the Contractor whether arranged under this Contract or any other contract or subcontract between the parties. Any assignment made without consent is invalid.

Use of the University of the South Trademarks and Name: The University owns and controls its names, marks, logos, colors, insignias, seal, designs, symbols, depictions of campus buildings and landmarks. Unless specifically authorized in writing by the University, the Contractor will have no right to use, and will not use, the name or any marks of the University, its regents, trustees, officials or employees, or the Seal of the University a) in any advertising, publicity, promotion, or b) to express or imply any endorsement of the Contractors products or services.

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