



**INVITATION FOR COMPETATIVE SEALED TERM BID**

The University of Central Arkansas invites you to bid on a contract for **Campus Plants and Trees** for the University of Central Arkansas, (UCA) located on and off the UCA campus, Conway, AR 72035. **This contract can be renewed up to seven (7) years in one (1) year increments. The contract period will begin upon contract approval and continue through to June 30, 2024.** The quantities stated within are estimated for bidding purposes only. The University may order more or less as is required during the term of the contract.

<b>Date Issued: 08/30/2023</b>	Bid Number: UCA-24-018
UCA Contact Person: Pam Giblet	<b>Bid Due Date: 09/13/2023</b>
Phone Number: 501-450-3156	Bid Due Time: 2:00 p.m.
Fax Number: 501-450-5020	Email: <a href="mailto:pgiblet@uca.edu">pgiblet@uca.edu</a>

Bid submittals must be properly marked with the bid number, bidders return address, phone, fax numbers, and will be submitted prior to the closing date and time listed above. Bids received after this time will **NOT** be accepted. Bids will be publicly opened and read aloud at the time and date mentioned above. **Bids CANNOT be Faxed or Emailed.** Please submit all questions related to this bid to [pgiblet@uca.edu](mailto:pgiblet@uca.edu)

**Bids Must Be Submitted In A Sealed Envelope.**

**THIS PAGE MUST BE SIGNED AND RETURNED WITH THE BID QUOTE.**

Company Name:	Contact Person:
Address:	Signature:
	Title:
	Phone Number:
	Fax Number:
	Email:

**Submit Bids To:** University of Central Arkansas  
 Attn: Pam Giblet  
 Procurement Department  
 201 Donaghey Ave. Wingo 113  
 Conway, AR. 72035

**SPECIAL TERMS & CONDITIONS:**

- **THIS IS AN "ALL OR NONE" BID INVITATION**
- **"Pricing" is "Subject to Negotiation" with each contract renewal period.**
- **Product Catalog:** All Bidders Must Submit a catalog that identifies the full inventory of trees and plants offered for sale. The University "Shall", on a needed basis, purchase from the catalog of the bidder awarded this contract. Under this contract the University shall not be limited to the items solicited for quote in this invitation. "Catalog Prices Must Be Negotiable" where possible.
- **Please Return Bid Pages: 1, 2, 3 & 4**

**University of Central Arkansas**  
**CONWAY, ARKANSAS 72035**  
**INVITATION FOR COMPETITIVE SEALED TERM BID**  
**("ALL or NONE")**

**UCA-24-018**

Item No.	(Estimated Quantity)	Description	Unit Price	Total
<b><u>TREES 25 Gallon</u></b>				
1	1	Dogwood (Cornus Florida) ----->	_____	_____
2	1	Maple (Autumn Blaze) ----->	_____	_____
3	1	Shumard Oak ----->	_____	_____
4	1	Willow Oak ----->	_____	_____
5	1	Nuthall Oak ----->	_____	_____
6	1	Willow Oak ----->	_____	_____
7	1	Pistach ----->	_____	_____
<b><u>GROUND COVERS</u></b>				
8	1	Asian Jasmine (18 Count Flat)----->	_____	_____
9	1	Lariope (18 Count Flat) ----->	_____	_____
10	1	Asian Jasmine (1-Gallon) ----->	_____	_____
11	1	Lariope (1-Gallon) ----->	_____	_____

**SHRUBS**  
**(3 Gallon)**

12	1	Drift Roses ----->	_____	_____
13	1	Knockout Roses ----->	_____	_____
14	1	Azaleas (George Tabor) ----->	_____	_____
15	1	Compacta Holly ----->	_____	_____
16	1	American Holly ----->	_____	_____
17	1	Lorepedium (Daruma) ----->	_____	_____
18	1	Pocomoke Crepe Myrtle ----->	_____	_____
19	1	Twilight Crepe Myrtle ----->	_____	_____
20	1	Rosemary ----->	_____	_____
21	1	Kaleidoscope Abelia ----->	_____	_____
22	1	Indian Hawthorne (Majestic Beauty)----->	_____	_____

**MATERIALS:**  
**(PER YARD)**

23	1	Super Soil ----->	_____	_____
24	1	Compost ----->	_____	_____

Delivery Charge: \$ \_\_\_\_\_

**Total Bid** (excluding sales tax) \_\_\_\_\_

**Company Name:** \_\_\_\_\_

Please include a "Product Inventory Catalog" with your quote.  
(See Special Terms & Conditions on page#1)

**NOTE: To ensure that the extended price of each item is tabulated correctly, please use this form provided by the University of Central Arkansas Purchasing Department to list your quotes by unit price. Also please list the extended price.**

All bid prices shall include inside delivery F.O.B. point of destination to the University of Central Arkansas to the designated building, floor and room number. Delivery must be made during regular working hours: Monday-Friday, 8:00 a.m. to 4:00 p.m.

The University of Central Arkansas reserves the right to award the items on this Invitation for bid to the lowest responsible, responsive bidder.

# **STANDARD TERMS & CONDITIONS**

## **I. GENERAL**

- 1. Parties.** As used in these Terms and Conditions, "University" refers to the University of Central Arkansas that issues a purchase order (PO) or enters into an agreement incorporating these terms. "Vendor" refers to the party to which a purchase order is issued by the University, or to a party to another form of agreement with the University.
  
- 2. Application.** These Terms and Conditions are incorporated by reference in each PO issued by the University and may be incorporated by reference in a written agreement between the University and a Vendor. Any terms or conditions included in a PO issued by University or in a separate written agreement between University and Vendor take precedence over these Terms and Conditions, unless provided otherwise in such PO or agreement.
  
- 3. Debarment and Suspension.** Vendor shall not be eligible to contract with the University for goods or services covered by the Arkansas Procurement Law if Vendor is presently debarred or suspended pursuant to Ark. Code Ann. § 19-11-245. Vendor shall not be eligible to contract with the University to provide goods or services that are a "covered transaction" within the scope of the Federal Acquisition Regulation or similar Federal law if Vendor is presently disbarred under Federal law. The University may immediately terminate the PO or agreement if the University determines that Vendor has been disbarred or suspended.
  
- 4. No Other Terms Accepted.** No additional terms or conditions shall be effective without the written consent of the University. The University expressly rejects any terms or conditions proposed or published by Vendor. In the event of a conflict between these Terms and Conditions and Vendor's proposed terms, these Terms and Conditions shall control.

## **II. PURCHASING**

- 1. Prices.** In case of errors in extension, unit prices shall govern. Prices shall be firm and not subject to adjustment or deviation unless specifically approved in writing by the University prior to delivery.
  
- 2. Discounts.** All cash discounts offered will be taken if earned.
  
- 3. Taxes.** The University is not exempt from paying sales or use taxes, except on those items and /or purchase transactions that are specifically exempted by law. When applicable, sales or use tax must be itemized on invoices.

**4. Shipment.** All products to be delivered to the University shall be shipped only FOB Point of Destination or, in the case of international shipments, delivered to the point of destination specified by the University, cleared for import and with all applicable duties and taxes paid. Risk of loss for products shall pass to the University upon delivery of the products to point of destination designated by the University.

**5. Backorders or delay in delivery.** Backorders or failure to deliver within the time required may, at the sole discretion of the University, be deemed an event of default. Vendor must give written notice to the University Procurement Department of the reason for any such delay and the expected delivery date. The University's Procurement Department may, in its discretion, extend the date of delivery.

**6. Delivery requirements.** No substitutions or cancellations are permitted without approval of the University Procurement Department. The delivery shall be made during University work hours only (generally, 8 a.m. - 4:30 p.m., Central Standard Time, though slightly varies depending on particular campus, and closed Saturday, Sunday and University Holidays), unless prior approval for other delivery has been obtained. Items should be shipped to the "Ship-To" address listed on the PO or agreement..

**7. Variation in quantity.** The University assumes no liability for commodities produced, processed, or shipped in excess of the amount specified on the PO.

**8. Duties and customs fees.** All duties and customs fees shall be paid in advance by the Vendor prior to shipping any product for import or export to the University.

**9. Permits and licenses.** Vendor shall, at its own expense, procure and keep in effect all necessary permits, certifications or licenses as required by law or as otherwise required to fulfill the PO or agreement.

**10. Inspection and testing.** All goods and other products furnished will be subject to inspection and acceptance by the University after delivery. Failure to meet the agreed upon product or services specifications entitles the University to cancel the PO or agreement, to reject some or all of the goods or services, to purchase replacement goods or services elsewhere and to charge the full increase, if any, in cost and handling to Vendor, and to obtain from Vendor a refund of all monies paid by the University. Payments made by the University to Vendor shall not be deemed a waiver of the University's rights or remedies.

**11. Time of the Essence.** Vendor and University agree that time is of the essence in all respects concerning the PO and the performance of the obligations thereunder.

## III. PAYMENT

**1. Invoicing.** The Vendor will be paid in a timely manner upon submission of a properly itemized invoice, after delivery and acceptance of goods or services by the University. All invoices must be sent to the "Bill To" point listed on the University purchase order, and must also include the following additional information where applicable:

- The complete name and remittance address of the Vendor
- Invoice Date
- Invoice Number
- Purchase Order Number
- Itemized listing of purchases, to include a description of the merchandise and/or services, unit price and extended line total
- Name and location of department for whom the goods or services were provided.
- Discount payment terms
- Itemized taxes.

**2. Interest and Late Charges.** Under Ark. Code Ann. §§ 19-4-706 and 19-11-224, the University shall not pay interest or late charges until 60 days after payment is due.

**3. Deposits.** The University may not make payments in advance of receiving goods or services. Title to any amount remitted by the University as a deposit remains with the University pending completion of the transaction and shall be immediately returned by Vendor to the University in the event that: (a) the Vendor does not deliver the agreed upon product, service or performance when and as agreed; (b) the agreement or PO is terminated by the University for cause; or (c) if either party is unable to perform its obligations under the agreement or PO as a result of an Excused Performance Event (as defined in these Terms and Conditions).

**4. Payment Instructions.** Vendor agrees that in the course of making payments the University is entitled to rely on information contained in written or electronic communications that the University reasonably believes have been transmitted or authorized by Vendor. Vendor shall hold the University harmless against any loss or damage related to or arising from University's reliance on such communications.

## IV. MINIMUM STANDARDS

**1. Service Warranties.** Vendor shall perform all services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally accepted standards for similar services in Vendor's industry, trade or profession, and shall devote adequate resources to timely meet its obligations under the PO or agreement.

**2. Product Warranties.** Unless otherwise specified in a PO or a separate written agreement, all items shall be newly manufactured, in first class condition, latest model and design and shall include, where applicable, containers suitable for shipment and storage. Vendor guarantees that everything furnished will be free from defects in design, workmanship and material and that items sold by drawing, sample or specification will conform thereto and will serve the function for which furnished under the PO or agreement ("Specifications"). Vendor further guarantees that if the items furnished are to be installed by the Vendor, such items will function properly when installed and any manufacturer warranties will be assigned to the University. Vendor also guarantees that all applicable laws have been complied with relating to construction, packaging, labeling and registration of the items furnished. Vendor's obligations under this paragraph shall survive for a period of one (1) year from date of delivery, unless otherwise specified herein.

**3. Confidentiality of Student Education Records.** To the extent that Vendor has access to, stores or receives student education records, Vendor will abide by the limitations on use and re-disclosure of such records set forth in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, and 34 CFR Part 99. Vendor shall hold student record information in strict confidence and shall not use or disclose such information except as authorized in writing by the University or as required by law. Vendor shall not use the information for any purpose other than the purpose for which the disclosure was made. Upon termination or expiration of the PO or agreement Vendor shall return or destroy all student education record information within 30 days.

**4. HIPAA.** To the extent that the PO or agreement involves covered use or receipt of Protected Health Information, as defined under the Health Insurance Portability and Accountability Act (HIPAA), Vendor agrees to fully comply with all applicable requirements of HIPAA and the regulations promulgated pursuant to HIPAA.

**5. Campus Policies.** In the event Vendor provides services or deliver goods to the University campus, Vendor and its permitted subcontractors will fully comply with all applicable University policies and Arkansas and federal law while on campus or on any other University property. This includes, but is not limited to, the following: (a) Vendor shall not permit tobacco, electronic cigarettes, alcohol, or illegal drugs to be used by any of its officers, agents, representatives, employees, subcontractors, licensees, guests or invitees while on the campus of the University; (b) Vendor will not permit any of its officers, directors, agents, employees, contractors, subcontractors, licensees, guests or invitees to bring any explosives, firearms or other weapons onto the campus of the University, except to the extent expressly permitted by University policies or by the Arkansas enhanced concealed carry laws; (c) Vendor will not allow any of its officers, directors, agents, employees, contractors, subcontractors, licensees, guests or invitees that are registered sex offenders or have been convicted of a felony involving force, violence, or possession or use of illegal drugs to enter the campus of the University.



**6. Compliance with NCAA and Athletic Conference Rules and Regulations.**

Vendor and its officers, employees, volunteers, subcontractors, agents, representatives, and guests will comply with all applicable National Collegiate Athletic Association ("**NCAA**") and athletic conference bylaws, rules, and regulations; and the rules of any other conference or association to which the University's athletic teams may belong. Vendor and its officers, employees, volunteers, subcontractors, agents, representatives, and guests will not engage in any of the following activities: (a) wager on any collegiate sporting or athletic event involving the University; (b) exert, attempt to exert, or conspire to exert, authority or influence over any student-athlete or other participant in an attempt to manipulate any outcome of a University sporting or athletic event or the final outcome of any University sporting or athletic event; (b) disseminate, utilize, or permit others to disseminate or utilize, non-public confidential information regarding a student-athlete or University athletic team for the purposes of gambling; or (c) offer or provide, or become any way involved in offering or providing, a prospective or an enrolled student-athlete an improper inducement or extra benefit or improper financial aid. Vendor and its officers, employees, volunteers, subcontractors, agents, representatives, and guests will: (a) report all perceived or potential violations of NCAA, athletic conference, University, and University Athletic Department rules, policies, and procedures to the appropriate individuals (e.g., the University Athletic Department Compliance Office); (b) attend all compliance rules education meetings requested by University; and (c) cooperate fully in any NCAA infractions process, including the investigation and adjudication of a case by law enforcement, the University, its Office of General Counsel and its athletic governing athletic bodies or conferences. Vendor will hold harmless and indemnify University for any violation of such bylaws, rules or regulations by Vendor, its officials, employees, volunteers, subcontractors, agents, representatives, and guests.

**7. Web Site Accessibility.** Vendor agrees that any web-based services provided by Vendor substantially comply with the accessibility guidelines of Section 508 of the Rehabilitation Act of 1973 and with the current version of the Web Content Accessibility Guidelines (WCAG) and shall promptly respond to and resolve any accessibility complaints received from the University or from web-site users.

**8. Non-Discrimination.** Vendor agrees to comply with all applicable Federal and State laws, including without limitation laws pertaining to non-discrimination and affirmative action. Without limiting the generality of the foregoing, Vendor agrees as follows: (a) Vendor will not discriminate against any qualified employee, applicant for employment or participant in any program because of race, sex (including sexual orientation and gender identity), color, age, religion, disability, genetic information, national origin or veteran status; (b) in all solicitations or advertisements for employees, Vendor will state that all qualified applicants will receive consideration without regard to race, sex (including sexual orientation and gender identity) color, age, religion, disability, genetic information, national origin or veteran status; (c) Vendor's failure to comply with this non-discrimination clause shall be deemed a breach of any agreement between the parties and such agreement may be canceled, terminated or suspended in whole or in

part; (d) Vendor will include the provisions of items (a) through (c) in every permitted subcontract so that such provisions will be binding upon each subcontractor of Vendor.

**9. Data Security.** The following apply to any agreement, PO or engagement in which Vendor has access to, stores or processes electronic or digital records and information or records of any type owned, created, received, collected or stored by the University or on its behalf ("Data"). Data includes, but is not limited to, personally identifiable information, University, student, faculty and staff Data, metadata, and user content.

Vendor shall collect and use Data only for the purpose of performing its obligations under a PO or agreement. Vendor shall not provide or disclose Data to any entity or person not employed by Vendor without prior written consent of the University, except as may be required by law or permitted by the express terms of the PO or agreement. Vendor shall not change the manner in which Data is collected, used, or shared without the prior written consent of the University.

All Data in the possession or control of Vendor or its subcontractors or agents shall be destroyed, or transferred to the University when the Data is no longer needed for performance of the PO or agreement.

Vendor, and each subcontractor and agent of Vendor with access to Data, shall maintain appropriate technical and organizational measures for the protection of the security, confidentiality and integrity of Data and to prevent unauthorized access to including without limitation, safeguards that meet the requirements of the Federal Trade Commission Safeguard Rule, set forth at 16 CFR Part 314 and the European Union's General Data Protection Regulations ("GDPR"). Vendor's technical and organizational measure shall conform to the standards set in the current version of the **NIST** Cybersecurity Framework (or its equivalent). Such measures shall include measures for protection against unauthorized or unlawful access to Data and against accidental or unlawful destruction, loss, alteration, damage, disclosure of, or access, to Data.

Vendor shall maintain and operate a formal security program materially in accordance with industry standards that is designed to: (i) ensure the security and integrity of Data, (ii) protect against threats or hazards to the security or integrity of Data, (iii) prevent unauthorized access to Data, and (iv) prevent unauthorized access to the University's information technology infrastructure including, without limitation, data processing devices, data storage devices, servers, networks, information services and computing devices and communication devices ("IT Infrastructure").

If Vendor processes payment card data, Vendor shall also comply with all applicable requirements for validation and compliance with the PCI DSS (Payment Card Industry Data Security Standard), as appropriate for its Service Provider level.

In the event Vendor discovers unauthorized access to IT Infrastructure or unauthorized use or disclosure of Data (a "Security Breach") or reasonably believes that a Security Breach has occurred, Vendor shall promptly (and within any timeframe established by applicable law concerning Vendor's notification requirement) notify the University of such Security Breach, shall provide to the University any information regarding the incident reasonably requested by the University (including a list of the Data and IT Infrastructure affected and all affected individuals and their contact information) and shall promptly take all measures reasonably required to recover Data, to remedy any flaws, defects or vulnerabilities in Vendor's systems, software or personnel related to the Security Breach and, if requested by the University, to assist the University in identifying and remedying any other flaws, defects or vulnerabilities related to the Security Breach.

If Vendor maintains or stores Data, Vendor shall engage, at its cost, an independent accounting firm to produce annual audit reports. The University reserves the right to require that such audits employ the SOC 2 standards of the American Institute of Certified Public Accountants. Vendor will transmit a copy of each audit report to the University immediately following Vendor's receipt of such report.

With respect to any processing of personal data of persons located in the European Union or the European Economic Area, Vendor shall only act on the written instruction of the University and shall assist the University in compliance with GDPR in relation to the security of processing, the notification of personal data breaches, data protection impact assessments, answering data subjects' requests, and allowing data subjects to exercise their rights. Vendor shall ensure that individuals processing the data are subject to a duty of confidentiality and only engage sub-processors with the prior consent of the University and under a written contract.

Vendor shall limit access to Data and IT Infrastructure ("Data Access") to individuals whose duties require Data Access in order for Vendor to perform its contractual obligations. Before permitting Data Access to any individual, Vendor shall obtain, to the extent permitted by law, current criminal and financial background checks for such individual. Vendor shall not permit Data Access by any individual that Vendor reasonably determines may expose the University to a risk of loss or damage, unauthorized use or modification of Data, damage to IT Infrastructure.

Except as may be provided by a separate written agreement, all rights in Data and IT Infrastructure, including all intellectual property rights, shall remain the property of the University, and Vendor has only a limited, nonexclusive license for the sole purpose of performing its obligations as outlined in the PO or agreement.

Vendor shall maintain insurance, in the amount of at least \$5,000,000 per occurrence, protecting the University against loss or damages (including costs of litigation) arising from a Security Breach related to or arising from Vendor's acts or omissions.

## V. UNIVERSITY PROPERTY RIGHTS

**1. University Property.** Specifications, drawings, information, dies, cuts, negatives, positives, data or any other commodity or intellectual property furnished to Vendor shall remain property of the University, shall be kept confidential by Vendor unless disclosure is required by law, shall be used only as expressly authorized, and shall be returned to the University at Vendor's expense. Vendor shall, at the request of the University, sign a written assignment of all intellectual property (including, without limitation, rights under copyright, trademark and patent law) developed by or for Vendor expressly for the University in the course of performing Vendor's obligations, and all such intellectual property shall be the property of the University unless provided otherwise in a signed, written agreement.

**2. Marks and Logos.** The University's trade names, nicknames, trade dress, logos, mascots, uniforms, images, facilities, landmarks, symbols, trademarks, and service marks, or other indicia of intellectual property whether presently existing or later established, including without limitation any derivative marks (collectively "Marks") are the exclusive property of the University. Nothing in any agreement or PO transfers, licenses, or allows any use of the University's Marks unless expressly agreed upon in writing by both parties. In the event that an agreement between Vendor and the University grants such authorization, Vendor must immediately discontinue use of the Marks of the University upon the expiration or termination of the agreement. Unauthorized use of the Marks of the University by Vendor or its respective employees, affiliates, or subagents constitutes infringement of the University's rights and a material breach of contract. Under no circumstances may Vendor use the University's Marks in such a manner as to imply or state an endorsement of Vendor or its products by the University.

**3. Use of Logo Products.** Merchandise that carries a University logo or trademark must be purchased from vendors that are licensed by or through the University.

**4. Liens and Security Interests.** Property of the University shall not be subjected to liens or security interests of any nature. Any provision of an agreement, quotation, PO or invoice that purports to impose a lien or security interest is expressly rejected by the University and is of no effect.

**5. Work for Hire.** All goods, products, software or other items (collectively the "deliverables") under this agreement shall be and remain the exclusive property of UCA. All right, title and interest in such deliverables shall vest in, and be the property of, UCA. The parties agree that all deliverables shall, to the fullest extent permitted by law constitute "work for hire" under the U.S. copyright law, or any other law. Company shall retain its rights in its know-how, concepts, materials and information developed independently of this agreement. However, with regard to the deliverables paid for by UCA and produced under this agreement, UCA is hereby granted an exclusive,

perpetual license (royalty-free) to use such deliverables in UCA's business. Company agrees to execute and deliver to UCA any and all instruments, documents or assignments to reflect the matters set forth in this paragraph.

## **VI. PERFORMANCE AND TERMINATION**

**1. Waiver.** No waiver of any term, provision or condition of a PO or agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed or construed to be a further or continuing waiver of any such term, provisions or condition of the contract.

**2. Excused Performance.** In the event that the performance of any terms or provisions of a PO or agreement shall be delayed or prevented because of compliance with any law, decree, or order of any governmental agency or authority, either local, state, or federal, or because of riots, war, acts of terrorism, public disturbances, unavailability of materials meeting the required standards, strikes, lockouts, differences with workmen, fires, floods, Acts of God, epidemic or pandemic or any other reason whatsoever which is not within the control of the party whose performance is interfered with and which, by the exercise of reasonable diligence, such party is unable to prevent (the foregoing collectively referred to as "Excused Performance"), the party so interfered with may at its option suspend, without liability, the performance of its obligations during the period such cause continues, and extend any due date or deadline for performance by the period of such delay, but in no event shall such delay exceed six (6) months unless agreed otherwise by the University.

**3. Disputes.** Vendor and the University agree that they will attempt to resolve any disputes in good faith. Subject to the provisions on sovereign immunity herein, the State of Arkansas shall be the sole and exclusive venue for any litigation or proceeding that may arise out of or in connection with a PO or agreement. The Vendor acknowledges, understands and agrees that any actions for damages against the University may only be initiated and pursued in the Arkansas Claims Commission. Under no circumstances does the University agree to binding arbitration of any disputes or to the payment of attorney fees, court costs or litigation expenses including appeals.

**4. Termination.** The agreement between Vendor and the University or PO issued by the University may be terminated by the University as follows:

For Breach: In the event that the Vendor fails to perform any obligation provided in these terms and conditions, the PO or the agreement, the University may notify the Vendor in writing of such failure and demand that the same be remedied within ten (10) days. Should the Vendor fail to remedy the same within said period, the University shall then have the right to immediately terminate the PO or agreement without penalty or

further obligation and exercise any rights and remedies available to it by law or in equity. Additionally, upon Vendor's failure to remedy as provided above, the University may, without prejudice to any other rights or remedies available to the University, terminate the PO or agreement, in whole or in part, and procure the goods and/or services elsewhere and charge to Vendor all costs exceeding the price set forth in the PO or agreement.

For Convenience: The University may terminate the PO or agreement for the convenience of the University upon sixty (60) days advance written notice to Vendor

Non-appropriation: The University may cancel a PO or agreement to the extent the funds are no longer legally available for expenditures under the PO or agreement. Any delivered but unpaid for goods will be returned to the Vendor. If the University is unable to pay for goods that it retains or services provided, the Vendor may file a claim with the Arkansas State Claims Commission.

## **VII. CERTIFICATIONS REQUIRED BY LAW**

**1. Contract and Grant Disclosure and Certification.** Any contract, or amendment to any contract, executed by the University which exceeds \$25,000.00 shall require Vendor to disclose information consistent with the terms of Arkansas Executive Order 98-04, and any amendments or replacements, and the regulations pursuant thereto. Failure of any individual or entity to disclose, or the violation of any rule, regulation or policy promulgated by the Department of Finance and Administration pursuant to this Order, shall be considered a material breach of the terms of the contract, lease, purchase agreement, or grant and shall subject the party failing to disclose, or in violation, to all legal remedies available to the University under the provisions of the existing law. The Contract and Grant Disclosure and Certification Forms (F-1 and F-2) can be found on the following website: <https://www.transform.ar.gov/procurement/agencies/forms-and-reporting/>

**2. Illegal Immigrant Certification.** For services contracts and construction contracts with a value of \$25,000 or greater, Vendor must certify that Vendor does not employ illegal immigrants and will not employ illegal immigrants during the term of the agreement between the University and the Vendor.

**3. Prohibition Against Boycotting Israel.** In accordance with Ark. Code Ann. § 25-1-503, if the PO or agreement has a value of \$1,000.00 or more, Vendor certifies to University that Vendor (a) is not currently engaged in a boycott of Israel and (b) agrees for the duration of its agreement with the University not to engage in a boycott of Israel.

**4. Technology Access.** When procuring a technology product or when soliciting the development of such a product, the State of Arkansas is required to comply with the provisions of Ark. Code Ann. § 25-26-201 et seq., as amended by Act 308 of 2013,

which expresses the policy of the State to provide individuals who are blind or visually impaired with access to information technology purchased in whole or in part with state funds. Vendor acknowledges and agrees that state funds may not be expended in connection with the purchase of information technology unless that technology meets the statutory Requirements found in 36 C.F.R. § 1194.21, as it existed on January 1, 2019 (software applications and operating ICSs) and 36 C.F.R. § 1194.22, as it existed on January 1, 2019 (web-based intranet and internet information and applications), in accordance with the State of Arkansas technology policy standards relating to accessibility by persons with visual impairments. Accordingly, Vendor providing a technology product shall expressly represent and warrant to the University through the procurement process by submission of a Voluntary Product Accessibility Template (VPAT) for 36 C.F.R. § 1194.21, as it existed on January 1, 2019 (software applications and operating ICSs) and 36 C.F.R. § 1194.22, that the technology provided to the University for purchase is capable, either by virtue of features included within the technology, or because it is readily adaptable by use with other technology, of:

Providing, to the extent required by Ark. Code Ann. § 25-26-201 et seq., equivalent access for effective use by both visual and non-visual means.

Presenting information, including prompts used for interactive communications, in formats intended for non-visual use.

After being made accessible, integrating into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

Providing effective, interactive control and use of the technology, including without limitation the operating system, software applications, and format of the data presented is readily achievable by nonvisual means.

Being compatible with information technology used by other individuals with whom the blind or visually impaired individuals interact.

Integrating into networks used to share communications among employees, program participants, and the public.

Providing the capability of equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

State agencies cannot claim a product as a whole is not reasonably available because no product in the marketplace meets all the standards. Agencies must evaluate products to determine which product best meets the standards. If an agency purchases a product that does not best meet the standards, the agency must provide written

documentation supporting the selection of a different product, including any required reasonable accommodations.

For purposes of this section, the phrase "equivalent access" means a substantially similar ability to communicate with, or make use of, the technology, either directly, by features incorporated within the technology, or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state and federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands or other means of navigating graphical displays, and customizable display appearance. As provided in Ark. Code Ann. § 25-26-201 et seq., as amended by Act 308 of 2013, if equivalent access is not reasonably available, then individuals who are blind or visually impaired shall be provided a reasonable accommodation as defined in 42 U.S.C. § 12111(9), as it existed on January 1, 2019.

If the information manipulated or presented by the product is inherently visual in nature, so that its meaning cannot be conveyed non-visually, these specifications do not prohibit the purchase or use of an information technology product that does not meet these standards.

**5. Export Controls.** Vendor shall comply with all applicable laws, regulations and restrictions of the United States concerning the export of products, technical data and direct products thereof including, without limitation, all regulations regarding export, asset control and destination control of the Commerce, Treasury, State and Defense Departments of the United States Government, the Export Controls Act of 2018, and the Export Administration Act of 1979, as amended from time to time (each an "Export Control"). Vendor must notify University in advance if Vendor is providing to University any property (whether tangible or intangible), data or services governed by the Department of State, Directorate of Defense Trade Controls, International Traffic in Arms Regulations (ITAR) or controlled by a "600 series" or 9x515 Export Control Classification Number (ECCN).

## **VIII. LIABILITY**

**1. Liability Limits.** Any language in an agreement, quotation or Vendor's invoice or standard terms proposing to place a dollar limitation on Vendor's liability shall not apply to Vendor's obligation to indemnify the University against third-party claims, a Security Breach or Vendor's intentional torts, criminal acts, fraudulent conduct or gross negligence.

**2. Insurance.** The University does not maintain general commercial liability or other liability insurance. Any provision of a quotation, purchase order or invoice requiring that the University purchase or maintain liability insurance is rejected.



**3. Sovereign Immunity.** Nothing in any PO or Agreement shall be construed to waive the sovereign immunity of the Board of Trustees of the University of Central Arkansas, of the University, or of any entity thereof.

**4. Limitation of University's Liability.** The University specifically rejects any provision of any contract, invoice, standard agreement or standard terms that requires the University to indemnify Vendor.

**5. Indemnification By Vendor.** Vendor shall defend, indemnify, and hold harmless the University, its agents, officers, board members, and employees from and against any and all claims, damages, losses, and expenses, including reasonable attorney's fees, for any claims arising out of or in any way relating to the performance of Vendor's obligations under a PO or agreement, including but not limited to any claims pertaining to or arising from Vendor's infringement of patents, copyrights or other intellectual property rights and Vendor's negligence, intentional acts or omissions.

## **IX. MISCELLANEOUS**

**1. Assignments.** No PO or agreement may be assigned, nor may the duties thereunder be assigned, delegated or subcontracted, without the written consent of the University.

**2. No Exclusivity.** This is not an exclusive agreement. The University reserves the right to purchase, use, lease, license or otherwise procure any similar services or products.

**3. Antitrust Assignment.** Vendor assigns, sells and transfers to the University all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or the State of Arkansas for price fixing, which causes of action have accrued prior to the date of this assignment and which relate solely to the particular goods or services purchased by or produced for the University pursuant to a PO or contract.

**4. Notification and Communications.** Notices and other communications to the University shall be directed to the address provided in the PO or agreement, and to any e-mail address provided by the University and be effective upon receipt. Vendor agrees that the University is entitled to rely on information contained in written or electronic communications that the University reasonably believes have been transmitted or authorized by Vendor. In addition to any notice provisions specified herein, all notices, requests, and other communications required or permitted to be sent, including any notice of demand, claim, termination, cancellation or breach against the University shall also in writing delivered personally, by overnight courier service or by United States certified mail, postage paid, return receipt requested, to the following: University of

Central Arkansas, Office of General Counsel, 201 Donaghey Avenue, Wingo Hall, Suite 207, Conway, AR 72035 in order to be effective.

**5. Governing Law.** All agreements and POs, including all amendments thereto, shall be construed and enforced in accordance with the laws of the State of Arkansas, without regard to its choice of law principles.

**6. Prohibition on Certain Telecommunications Equipment and Services:** Vendor represents and warrants that it does not use any "covered telecommunications equipment or services" as a "substantial or essential component of any system," or as "critical technology" as part of any system, as those terms are defined in Federal Acquisition Regulation clause 52.204-25. In the event Vendor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or Vendor is notified of such by a subcontractor at any tier or by any other source, Vendor shall immediately notify the University and provide the information prescribed in Federal Acquisition Regulation clause 52.204-25(d)(2). Any breach of this paragraph shall give the University the right to immediately terminate this Purchase Order upon written notice to Vendor.

**7. Use of Federal Transit Administration (FTA) Funds.** If Federal Transit Administration (FTA) funds are used in any procurement by the University, certain contract clauses apply based on the nature and dollar value of the procurement. The FTA clauses and applicable types of procurements and thresholds may be found at the following links: [FTA Procurement Resources](#) and [FTA Certifications and Assurances](#) as well as [Federal Required and Other Model Clauses](#) and [Appendix A of the Best Practices and Lessons Learned Manual](#). In addition, for each covered prime contract issued by the University with support from FTA funds, Vendor agrees to the prompt payment and retainage provision at the following link: [Prompt Payment Retainage](#). Additional Resources: [FTA Circular 4220.1F](#) (See Appendix D Provisions, Certifications, Reports, Forms, and other Matrices); [FTA Master Grant Agreements](#).

**8. Ethical Standards.** It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by Vendor for the purpose of securing business in general.

**9. UCA Contract Rider.** The following provisions are incorporated pursuant to University Board of Trustees Policy No. 416:

(1) Notwithstanding any other provision of this agreement or contract, the University of Central Arkansas shall not be responsible or liable for any type of special or consequential damage to the other party, specifically including, but not limited to, lost profits or commissions, loss of goodwill, or any other damages of such nature.

(2) Notwithstanding any other provision of this agreement or contract, the University of Central Arkansas shall never indemnify or hold another party harmless from any damages, liability, claims, demands, causes of action or expenses. However, with respect to any loss, expense, damage, liability, claim or cause of action, either at law or in equity, for actual or alleged injuries to persons or property, arising out of any negligent act or omission by UCA, or its employees or agents, in the performance of this agreement, UCA agrees that:

(a) it will cooperate with the other party to this agreement in the defense of any action or claim brought against the other party seeking damages or relief;

(b) it will, in good faith, cooperate with the other party to this agreement should such other party present any claims or causes of action of the foregoing nature against UCA to the Arkansas State Claims Commission;

(c) it will not take any action to frustrate or delay the prompt hearing on claims of the foregoing nature by the Arkansas State Claims Commission, and will make reasonable efforts to expedite any hearing thereon.

UCA reserves the right, however, to assert in good faith any and all defenses available to it in any proceedings before the Arkansas State Claims Commission or any other forum.

(3) The University of Central Arkansas does not have any form of general liability insurance. It does have liability insurance coverage on vehicles, as well as certain professional liability coverage for clinical programs (and students assigned through those programs). Please contact the university department with responsibility for the program involved or the Office of General Counsel, if you have any questions concerning insurance coverage.