

## RIT Contract Check List

Completed by:

Date:

Date scheduled for next review:

Contract Review	Yes	No	Comments
<b>1) Necessity</b> a. Is it necessary to have a contract? i. Does it lower our cost? ii. Does it assure us of delivery? iii. Are there disadvantages of not having a contract? b. Have negotiations been completed? c. Are essential elements of the contract settled?			
<b>2) Ownership</b> Is RIT ownership of the contract documented? a. Name b. Title c. Department			
<b>3) Vendor</b> Are the all parties clearly identified? a. Corporate / Individual names of other party b. Authority of representative to sign c. Point of contact for each party (name, address, email, telephone, etc.)			
<b>4) Conflicts of Interest</b> Is the vendor an employee or affiliated with an employee, trustee or officer of the Institute? a. If yes, then is the appropriate statement of conflict of interest on file? b. If a Trustee conflict of interest, then has the matter been managed by a Trustee committee?			
<b>5) Legal Department Review</b> Do you know/understand the terms and conditions? Does the contract involve expenditure in excess of 100,000, unusual risk or circumstance? If so, has the contract been reviewed by the Legal Department?			
<b>6) Approval(s)</b> Was the contract properly approved? a. Up to \$5,000 - departmental; b. Greater than \$5,000 – submit through Purchasing Department with departmental approvals; c. Aggregate total up to \$1,000,000 – The Vice president for Finance and Administration is required to certify to the Board of Trustees Oversight committee;			

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<p>d. Aggregate total of \$1,000,000 or more – approval by the Board of Trustees Oversight Committee. See Procurement Policies and Procedures for greater detail.</p>			
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<b>General Terms &amp; Conditions</b>	Yes	No	Comments
<p><b>1) Formation of Contract</b>            Are there terms of acceptance?                a. Description or scope of service                b. Quantity                c. Price                d. Delivery schedule of the goods or services                e. Begin and End Dates            Are subsequent changes by the vendor grounds for rejection?            Acceptance of changes that deviate from RIT's specs should be clearly acknowledged and documented as acceptable.            Are clear measures of acceptable performance of services provided for? (i.e.-dates, deliverables?)</p>			
<p><b>2) Taxes</b>            Are taxes such as sales tax, custom duty, etc. addressed under the contract terms? (The Institute is tax exempt.)</p>			
<p><b>3) Shipping and Freight</b>            Are shipping, freight and duties addressed under the contract terms? Is there a clear indication of how these will be handled?</p>			
<p><b>4) Discounts</b>            Are there special clauses for discounts, volume rebates, mixed pricing, and resale programs?</p>			
<p><b>5) Cancellation</b>            Does the Institute have the right to cancel all or any portion of goods then not shipped or services then not performed?            Are cancellation consequences clearly spelled out?</p>			
<p><b>6) Termination for cause.</b>            Are there terms to terminate the agreement for cause in the event the vendor fails to comply with any terms or conditions?            Are termination consequences clearly spelled out?</p>			
<p><b>7) Warranty</b>            Does the vendor provide a warranty to the Institute, its successors, assigns and customers?</p>			
<p><b>8) Set-off.</b>            Can claims by the vendor be setoff by reason of any counterclaim arising out of this or any other transaction with the vendor?</p>			

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<p><b>9) Waiver</b> Is there a cause that the Institute’s failure to insist on performance of certain terms and/or conditions does not thereafter waive any other terms conditions or privileges, whether the same or of similar type?</p>			
<p><b>10) Delivery</b> Is there a set date or time for delivery? Will title and risk of loss or damage to items ordered remain with the vendor until delivered to and accepted by the Institute?</p>			
<p><b>11) Indemnification</b> Does the vendor defend and indemnify the Institute against any claims arising out of or relating to the vendor’s performance or failure to perform?</p>			
<p><b>12) Insurance</b></p> <ul style="list-style-type: none"> <li>a. Does this contract warrant any modification to the Institute’s standard insurance specifications?</li> <li>b. Unless waived in writing by the Institute, has a certificate of insurance been filed by the Vendor? (This is required prior to shipping or commencement of work.)</li> <li>c. Does the Certificate of Insurance show RIT as an additional insured?</li> <li>d. Commercial General Liability (1986 ISO form or later with minimum limits of \$1,000,000 per occurrence / \$2,000,000 aggregate.)</li> <li>e. Automobile Liability (\$1,000,000 combined single limit.)</li> <li>f. Excess “Umbrella” Liability (\$3,000,000 minimum limits in excess of underlying limits.)</li> <li>g. Workers’ Comp. &amp; Employee Liability (Statutory New York limits.)</li> <li>h. If applicable, professional liability with minimum limits of \$1 million with trailing coverage for a period of 4 years from policy termination.</li> </ul>			
<p><b>13) Assignment</b> Is there a provision that none of the Vendor’s duties to perform its obligations may be delegated or assigned to another person or party with out written consent of the Institute?</p>			

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<p><b>14) Access to Records</b></p> <p>Does the Vendor permit the Institute to examine and audit all records related to this transaction for a 3-year period following the final payment? Does the Vendor agree to refund any overpayments disclosed in the audit?</p>			
<p><b>15) Publicity (Confidentiality)</b></p> <p>Is there a provision that the Vendor will not publicize or advertise the fact that the vendor is doing business with the Institute, unless otherwise authorized?</p>			
<p><b>16) Debarment *</b></p> <p>Does the Vendor certify that it nor any of its Principals is presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in this transaction or in any federal grant, benefit, contract or program by any Federal Department or agency?</p> <ol style="list-style-type: none"> <li>a. The Vendor agrees to provide immediate notice if it learns at any time that its certification was erroneous when submitted or during the term of the agreement, it or any of its principals is debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in this transaction or in any federal grant, benefit, contract or program by any Federal Department or agency.</li> <li>b. The Vendor agrees that it will include the clause in all subcontracts and subprojects.</li> <li>c. The Vendor agrees that debarment, suspension, proposed debarment or suspension; ineligibility or exclusion of the Vendor or any of its Principals or subcontractors shall constitute cause for immediate termination of this agreement.</li> <li>d. To the extent necessary to the assure accuracy of its certification, Vendor agrees to conduct searches of the List of Parties Excluded from Federal Procurement and Nonprocurement Programs maintained by the General Services Administration (<a href="http://epls.arnet.gov">http://epls.arnet.gov</a>) and the List of Excluded Individuals and Entities maintained by the Department of Health and Human</li> </ol>			

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Services ( <a href="http://oig.hhs.gov">http://oig.hhs.gov</a> ) prior to making its certification.			
<b>17) Applicable law</b> Does the contract provide that the terms shall be governed by the applicable laws and courts (i.e. the state of New York, Monroe county, etc.)?			

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Service Terms	Yes	No	Comments
<p><b>2) Independent Contractor</b> Does the contract provide that the independent contractor:</p> <ul style="list-style-type: none"> <li>a. Will not purport to act as an agent representative or employee of the Institute;</li> <li>b. Will determine the means and method of performing its services;</li> <li>c. Will supply all equipment, tools, materials, parts, supplies, and labor except as otherwise agreed to in writing,</li> <li>d. Will not hold the Institute responsible for the loss, theft, or damage of equipment, tools, materials, supplies and other personal property except for damage caused by the direct negligence of Institute?</li> </ul>			
<p><b>3) Standard of Care</b> Are there provisions that the Vendor:</p> <ul style="list-style-type: none"> <li>a. Will provide adequate and competent staff and supervision thereof;</li> <li>b. Will in all respects perform with at least that degree of care, skill and diligence normally exercised by persons regularly engaged in the Vendor's business or profession?</li> </ul>			
<p><b>4) Lawful Compliance *</b> Does the Vendor agree to comply with:</p> <ul style="list-style-type: none"> <li>a. All applicable laws, ordinances, and regulations of governmental authorities;</li> <li>b. The policies and procedures of the Institute;</li> <li>c. The rules and regulations of insurers of the Institute while on Institute property?</li> </ul> <p>To verify compliance, the Vendor agrees to permit Institute to inspect the Vendor's on site operations at any time.</p>			
<p><b>5) Hazardous Materials</b> Is there a provision that if the Vendor intends to bring onto the premises or take away from the Institute any hazardous chemicals or intends to engage in any activities which might reasonably be expected to create a danger or hazard to employees or other persons at the Institute, then in advance of any such activity the Vendor shall agree to:</p> <ul style="list-style-type: none"> <li>a. Submit to the office of safety for review and approval its program;</li> </ul>			

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<p>b. Adhere to its approved program?</p>			
<p><b>6) Licensed Professions</b>                  Does the Vendor represent and warrant that each person or entity acting for or on behalf of that Vendor has all licenses, certificates and other professional credentials required by law to perform the purchased services?                  a. If the Vendor is required to maintain professional licensure, certification or similar credentials in order to perform the purchased services, then does the Vendor maintain appropriate Professional Liability Insurance? ;                  b. Is coverage included in the Vendor's certificate of insurance (minimum limits of \$1,000,000 with coverage maintained at least 4 years subsequent to the termination date of the contract)?</p>			
<p><b>7) Is the vendor a Service organization? If so, has the vendor had a SAS 70 review of its control activities and processes to their customers? Obtain Service Auditor's Report from their service organization(s) and review information regarding the service organization's controls and the effectiveness of those controls.</b></p>			

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<b>Federal Compliance Terms *</b>	Yes	No	Comments
<p><b>1) Applicability *</b> Does the purchase of the goods and/or services by Institute involve the use of federally sourced funds? If yes, then complete the following:</p>			
<p><b>2) Compliance *</b> Are there provisions that all goods and services sold shall be produced, sold, delivered and furnished in compliance with the laws and regulations applicable to procurement under loans, grants, or other financial support of the United States government agency or agencies which have provided that support (including those set forth under OMB Circular A-110)? <b>Is there compliance with the NTID “Cost Principals Document” as set forth by the Federal Government?</b></p>			
<p><b>3) Access to Records *</b> Does access to records also apply to the Controller General of the United States and any duly authorized representatives thereof?</p>			
<p><b>4) Equal Opportunity *</b> Is there a provision that the vendor comply with E.O. 11246 “Equal Employment Opportunity” as amended by E.O. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR, part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor”?</p>			
<p><b>5) Anti-Kickback *</b> If the vendor engaged for construction or repair in excess of \$2,000, then is there a provision that the vendor will comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) 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”)?</p>			
<p><b>6) Davis - Bacon *</b> If the vendor engaged for construction or repair in excess of \$2,000, then is there a provision that the vendor will comply with the Davis – Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of</p>			

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Labor regulations (29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”)?			
<b>7) Hours and Standards *</b> If the vendor engaged for construction in excess of \$2,000 or other work in amount of \$2,500 that involves the employment of mechanics or laborers, then is there a provision that the vendor will comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) as supplemented by Department of Labor regulations (29 CFR part 5)?			
<b>8) Inventions *</b> Is there a provision that all rights of the Federal Government and the purchaser to any resulting inventions are reserved to them in accordance with 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements” and any applicable implementing regulations?			
<b>9) Environmental *</b> If the vendor engaged for an amount in excess of \$100,000, then is there a provision that the vendor will comply with all applicable standards, orders and regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.) and that violations must be reported to the purchaser and/or federal agencies as required under OMB Circular A-110?			
<b>10) Anti-Lobbying *</b> If the vendor engaged for an amount in excess of \$100,000, then is there a provision that the vendor will comply with the requirements of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), by providing to the purchaser all certifications required thereunder regarding disclosure of the use of funds for lobbying?			
<b>11) Flow-Down *</b> Is there a provision that the vendor will assure that any subcontract let hereunder includes the foregoing clauses, where such inclusion is required under OMB Circular A-110?			
<b>12) Federal Acquisition Regulation *</b> Are the following provisions included where required			

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<p>under CFR Part 15:</p> <ul style="list-style-type: none"> <li>a. 52.222-26, Equal Opportunity (E.O. 11246);</li> <li>b. 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212(a));</li> <li>c. 52.222-36, Affirmative Action for Workers with Disabilities (20 U.S.C. 793); and/or</li> <li>d. 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241)(flow down not required for subcontracts awarded beginning May 1, 1996)?</li> </ul>			
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<b>Health Record Terms</b> (applicable to all Vendors with access to Health Record Information)	Yes	No	Comments
<p><b>1) Definitions.</b>            Terms used herein shall have the meanings ascribed to them in the Standard for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164, promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (hereinafter, "HIPAA Privacy Standards") and as follows:</p> <ul style="list-style-type: none"> <li>a. "Appropriate safeguards" means policies, practices and procedures restricting use and disclosure of protected health information sufficient to comply with the HIPAA Privacy Standards as a covered entity in possession of protected health information.</li> <li>b. "RIT-Protected Health Information" or "RIT-PHI" means protected health information which Vendor has received from Institute, or which Vendor has created or received on behalf of Institute.</li> </ul>			
<p><b>2) Permitted or required uses and disclosure of RIT-PHI.</b>            Are permitted or required uses and disclosures of RIT-PHI specifically provided for in the contract?</p>			
<p><b>3) Restriction on Use and Disclosure of RIT-PHI.</b>            Does the Vendor agree that it will not, and that it will ensure that its directors, officers and workforce will not, use RIT-PHI for any purposes other than those required or permitted under this PO, nor in any manner that would constitute a violation of the HIPAA Privacy Standards if so used or disclosed by the Purchaser?            Vendor may, if necessary, use or disclose RIT-PHI for the proper management and administration of the Vendor or to carry out Vendor's legal responsibilities, provided that a disclosure for those purposes shall be made only if:</p> <ul style="list-style-type: none"> <li>a. Vendor obtains reasonable assurances in advance and in writing from the party to whom the disclosure is to be made that that party will continue to hold the information in confidence and use or further disclose it only as required by law or for the purposes for which it was disclosed to that party, and</li> </ul>			

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<p><b>b.</b> that party is under obligation to and does notify the Vendor of any instances of which that party is aware in which the confidentiality of the RIT-PHI has been breached.</p>			
<p><b>4) Safeguards.</b> Does the Vendor assure that it shall use appropriate safeguards to prevent use or disclosure of RIT-PHI other than as permitted or required in this PO? Vendor shall provide the Institute with copies of Vendor's applicable policies, practices and procedures.</p>			
<p><b>5) Reporting.</b> Is there a provision that the Vendor shall, within five (5) days of becoming aware of a use or disclosure of RIT-PHI by Vendor or its directors, officers, workforce, contractors or agents in violation of this PO or the HIPPA Privacy Standards, report such violation to Institute?</p>			
<p><b>6) Agents.</b> Does the Vendor provide that for any agent or subcontractor of Vendor that will have access to RIT-PHI, Vendor shall enter into an agreement pursuant to which such agent or subcontractor agrees to be bound by the same restrictions and conditions that apply to Vendor for the protection of RIT-PHI as set forth in this PO or provided by law?</p>			
<p><b>7) Access.</b> Does the Vendor provide that it will make available RIT-PHI in a manner that will assure timely compliance with the obligation under 45 CFR §164.524 to provide individuals the right to access protected health information?</p>			
<p><b>8) Amendment of RIT -PHI.</b> Is there a provision that the Vendor will make available for amendment and will amend RIT-PHI in a manner that will assure timely compliance with the obligations under 45 CFR § 164.526 to comply with the requests of individuals to have protected inaccurate or incomplete health information amended.</p>			
<p><b>9) Accounting for disclosures.</b> Is there a provision that the Vendor will make available the information required to assure timely compliance with the obligation under 45 CFR § 164.528 to provide individuals with an accounting of disclosures of protected health information?</p>			
<p><b>10) Open books.</b></p>			

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<p>Is there a provision that the Vendor will make its internal practices, books and records relating to the use and disclosure of RIT-PHI available to the Secretary of the US Department of Health and Human Services for purposes of determining compliance with 42 CFR § 164.504?</p>			
<p><b>11) Return or destruction of RIT-PHI.</b>                  Does the Vendor agree that at the termination of the Contract, if feasible, it will return or destroy all RIT-PHI that Vendor still maintains in any form, and will retain no copies of such information, or if such return or destruction is not feasible, then Vendor will extend the protections of RIT-PHI under this PO and limit further uses and disclosures to those purposes that make the return or destruction of the RIT-PHI not feasible? In any case in which Vendor believes that the return or destruction of RIT-PHI is not feasible, Vendor will explain the reasons therefore to Institute in writing. The provisions of this paragraph shall survive the termination of this PO.</p>			
<p><b>12) Remedies.</b>                  Does the Vendor acknowledge that irreparable injury will result if Vendor breaches any provision of HIPAA standards? Vendor agrees that if Vendor should engage, or allow or cause any other person or entity to engage, in the violation of any provision of HIPAA standards, then Institute shall be entitled, in addition to any other remedies, damages and relief as may be available under this PO or otherwise available at law, to immediate termination of this PO, to injunctive relief prohibiting Vendor from further violations, and to specific performance of obligations undertaken. Notwithstanding any other term or provision of this PO, Institute may terminate this PO if Institute determines that Vendor has violated any provision of HIPAA standards</p>			
<p><b>13) References.</b>                  All references herein to C.F.R. are to the Code of Federal Regulations as those may be superseded, amended or modified from time to time.</p>			

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<b>Information Systems Software Development, Acquisition and Maintenance</b>	Yes	No	Comments
1) Is there a provision that the vendor will provide a comprehensive manual to document specifications, function and performance? Can the manual be previewed for adequacy and clarity?			
2) Does the Vendor describe the terms and the scope of the license (perpetual or limited term), including permissible use or nonexclusive license?			
3) Are delivery and installation deadlines specified?			
4) Does the Vendor provide for acceptance testing that meets the user needs?			
5) Are the payment terms provided fair and equitable? Is a down-payment required and is it reasonable? Are there fees (i.e. additional location, etc.)? Are these terms consistent with the vendor's statement of work?			
6) Are the terms clear and equitable with regards to the conditions and any limitations of the warranty? Does the contract specify that conflicts between the warranty and any maintenance contract will be resolved in favor of RIT?			
7) Does the contract provide for strong proprietary-rights indemnity?			
8) Is there a provision or did you request to add a provision for a limited right to copy manuals?			
9) Are fixes, upgrades and future package options covered?			
10) Is the vendor's customization assistance available / offered?			
11) Will the source code be obtained or made available if access is required?			
12) Will reasonable rights to assign the license or sublicense of the software be provided?			
13) Is there clear direction with regards to the right to permit others to use the software?			
14) Is there a specific dollar amount penalty to be paid by the vendor should they default?			
15) Will the software package provide an adequate transaction processing audit trail?			
16) Are there reasonable terms for cancellation? Will both parties fulfill all contractual obligations until the time of cancellation? Is there a notice of 30			

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days or more required? Are there provisions for pro-rata refunds and / or penalties?			
<b>17)</b> Are there provisions for non-disclosure of proprietary information?			
<b>18)</b> Are there provisions for future performance and contract renewal? Are there limitations on the increase in price paid?			
<b>19)</b> What is the type of contract a. Fixed Price Contract b. Cost – plus fixed fee c. Time and material d. Incentive (cost plus award, cost plus incentive, fixed price incentive) e. Incentive (cost plus award, cost plus incentive, fixed price incentive) (Most common is fixed price and not changeable no matter what it costs the contractor.)			

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