

## Standard Construction Agreement

This Standard Construction Agreement ("Agreement") is entered into between Northern Kentucky University ("University") and \_\_\_\_\_ ("Contractor"). University and Contractor may be referred to singularly as a "Party" and collectively as the "Parties."

1. **TERM:** The term of this Agreement ("Initial Term") will begin on \_\_\_\_\_ and end on \_\_\_\_\_, unless terminated earlier pursuant to the terms of this Agreement. This contract includes \_\_\_\_\_ renewal(s) for \_\_\_\_\_ years(s) each a ("Renewal Term"). Renewals will require a contract amendment form and approval by each Party.

2. **SERVICES:** Insert a brief description of the goods and/or services to be provided by Contractor pursuant to this Agreement.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

← Check here if an RFP, bid, offer, proposal, quotation or other similar document(s) (collectively, "Attachment(s)") is/are being added as part of this Agreement. Any such Attachment(s) is/are hereby incorporated by reference and collectively constitute the ("Services"). This Agreement and any Attachment(s) are meant to be complementary. In the event of any inconsistency between the Attachment(s) and this Agreement, this Agreement will prevail. The order of precedence of the Attachments shall be as follows:

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_

3. **COMPENSATION:** Check one box only:

**This is a fixed price contract.** University will pay Contractor the amount of \$\_\_\_\_\_.

**This is not a fixed price contract.** University will pay Contractor an amount not to exceed \$\_\_\_\_\_ (based on an hourly fee and/or other method of calculation as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_).

**This is not a fixed price contract and will be performed on a service-order basis.** University will pay Contractor an amount not to exceed \$\_\_\_\_\_ (based on service order form(s) to be completed and signed by the Parties, a version of which will be provided to Contractor by University). University will engage Contractor on an "as-needed if needed" basis and does not guarantee the purchase of any quantity or dollar amount of Services.

4. **PAYMENT TERMS:** Contractor shall submit detailed invoices to University describing the Services rendered, the times when such Services were performed, compensable expenses and the amount due. University will pay undisputed amounts within thirty (30) days of receiving invoices. The Contractor shall only provide services for performance of the Work or any part thereof upon authorization from the University. The Contractor shall submit to the University within five (5) business days of satisfactory completion of the Work an invoice for its services to accomplish the Work. The invoice shall at a minimum: Clearly identify the Contractor, a unique invoice number, date the invoice was created, date the service(s) was performed, University's Purchase Order number, and a line itemization of each service performed with its related charge and total amount due. University shall make all reasonable efforts to pay valid invoices within thirty (30) days of receipt. University reserves the right to dispute any invoice it receives from Contractor which in the University's sole discretion it deems as invalid. University must notify Contractor in writing not less than fifteen (15) days after receipt of such an invoice that it intends to dispute. University and Contractor shall make all reasonable efforts to resolve any disputed invoice.

5. **CONTRACTOR'S STATUS AND RESPONSIBILITIES:** In performing the Services, Contractor will be deemed an independent contractor and not University's agent or employee. This Agreement will not be construed to create any partnership, joint venture or other similar relationship between the Parties. As an independent

contractor, Contractor will be solely responsible for determining the means and methods for performing the Services. Contractor shall perform the Services in strict accordance with this Agreement and in accordance with the highest standards of care, skill, diligence and professional competence applicable to contractors engaged in providing similar services.

6. **PROTECTION OF PROPERTY AND PUBLIC:** The Contractor shall protect the University's property from injury or loss arising in connection with this Contract. Except as otherwise covered by the Contractor's insurance, the Contractor shall pay for any such damage, injury, or loss, except such as may be directly due to errors caused by agents or employees of the University. The Contractor shall maintain fire protection as required by the Kentucky Building Code. Access to the Project site and surrounding buildings must be maintained during construction for local fire truck access. The Contractor shall maintain construction to allow access to new, existing or temporarily relocated standpipe, fire hydrant connections and fire alarm communication panels pursuant to Section 3018.8 of the Kentucky Building Code. If the Contractor utilizes the University's fire protection equipment, the Contractor shall replace any such materials lost, consumed or misplaced during the Contract period. The Contractor is responsible for any false alarms caused by dust created in the Work area or dust traveling to areas beyond the Work area due to inadequate dust protection barriers. Should there be a need for any existing or newly installed fire alarm system or parts of a system that requires service to be removed from service or disconnected, prior approval must be obtained from the University and the Contractor shall provide alternate protection such as a fire watch until such systems are returned to full normal operations. When work or service is completed on a disabled fire alarm system, the University shall be immediately notified so the system can be placed in service. The Contractor is responsible for the security of their materials, tools, and equipment at all times.
7. **CONTRACTOR SAFETY:** The Contractor shall provide safety controls for protection of the life and health of employees and visitors. The Contractor will utilize precautionary methods for the prevention of damage to property, materials, supplies, and equipment, and for avoidance of work interruptions in the performance of this Contract. In order to provide such safety control, the Contractor shall comply with all pertinent provisions of the Kentucky Fire Prevention Code, Kentucky Building Code, Kentucky Labor Cabinet's Division of Occupational Safety and Health Program Construction Standards (29 CFR 1926 as adopted by 803 KAR 2:400 through 2:425) and Federal Occupational Safety and Health (Construction) Standards that are in effect at the time the Contract is entered into and during the period in which the Contract is to be performed. The Contractor shall maintain and provide to University upon notice a written safety program which includes all pertinent written specialty standards such as, but not limited to, Control of Hazardous Energy Sources (Lockout/Tagout), Hazard Communications Program, First Aid, Blood Borne Pathogen Program, Respirator Use Program and Hearing Conservation Program. The Contractor shall require all subcontractors to have an effective written safety program or be required to follow the Contractor's written safety program. The Contractor shall maintain an accurate record of and shall report to Kentucky Labor Cabinet's Division of Occupational Safety and Health in the manner and on the forms prescribed by that Division, exposure data and all accidents resulting in death, traumatic injury or occupational disease. The Contractor shall maintain an accurate record of and shall report to the University's Project Manager, any damage to property, materials, supplies, and equipment incident to Work under this Contract. The Kentucky Labor Cabinet's Division of Occupational Safety and Health or the University's Environmental Health and Safety staff may notify the Contractor of any noncompliance with the foregoing provisions and the corrective actions to be taken. The Contractor shall, after receipt of such notice, immediately correct conditions. Notice delivered to the Contractor or the Contractor's representative at the site of the Work shall be deemed sufficient for this purpose. If the Contractor fails or refuses to comply promptly, the University may issue an order stopping all or part of the Work until satisfactory or corrective action has been taken. Failure or refusal to comply with the order will be grounds for stopping all payments due under the Contract to the Contractor. No part of the construction time lost due to any such stop order shall be cause for, or the subject of a claim for, extension of time or for additional costs or damages by the Contractor. The Contractor or any subcontractors shall immediately contact the University should they be selected for an inspection by the Kentucky Occupational Safety and Health Compliance Division. Compliance with the provisions of the foregoing sections by a subcontractor shall be the responsibility of the Contractor. Nothing in the provisions of this Article 4 shall prohibit the U.S. Department of Labor or the Kentucky Department of Labor Division of Occupational Safety and Health from enforcing pertinent occupational safety and health standards as authorized under Federal or State Occupational Safety and Health Standards. The Contractor shall take all necessary precautions for the safety of employees on the Work, and shall comply with all applicable provisions of federal, state, and municipal safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the premises where the Work is being performed. If the Contractor or any subcontractor has questions related to the health or safety required by their written safety program, they should contact the Kentucky Labor Cabinet Occupational Safety and Health Program Division of Education and Training. The Contractor shall designate a responsible member of the on-site workforce as the safety officer and shall report to the University the name of the person selected. The duties of the safety officer include the enforcement of safety regulations.

The [Contractor's Guide to Safely Working on Campus](#) is available on the Safety and Emergency Management website under Occupational Safety ("Resources"), and includes information on Key Assignment, the Hot Work Permit, the Red Tag Permit, Accident/Incident Reporting, and Emergency contacts.

- 8. HAZARDOUS MATERIALS:** If the Contractor encounters material reasonably believed to be or suspected to be asbestos containing material, lead, polychlorinated biphenyls (PCBs), or other hazardous material, the following procedures must be followed:
- The Contractor shall immediately stop Work in the affected area and notify the University. The University's Environmental Health and Safety unit will arrange for collection of samples, review of existing data, or other testing necessary to confirm the presence of hazardous materials. The University will notify the Contractor in writing of the results. Until that notification is received, the Work must not continue in the affected area.
  - If the material is confirmed to be asbestos, lead, polychlorinated biphenyls (PCBs), or other hazardous material, the University will take appropriate action to remove the material before the Contractor can continue Work in the affected area.
  - The Contractor shall not be required to perform any Work related to asbestos, lead, polychlorinated biphenyls, or other hazardous material. The Contractor is advised that certain classes of building materials (thermal system insulation, sprayed or toweled surfacing materials, and resilient flooring) installed before 1981 are required by law to be treated as asbestos containing until proven otherwise. These presumed asbestos containing materials must not be disturbed without confirmation from the University that asbestos is not present.

The University, the Contractor, and any subcontractor will be under the requirements of the OSHA Hazard Communication Standard (29) CFR 1910.1200. The Contractor and any subcontractor must provide their own written Hazard Communication Program. The Hazard Communication Standard must include: (1) A list of the hazardous chemicals to which the Contractor's employees may be exposed; (2) Statement of the measures that Contractor's employees and any subcontractor may take to lessen the possibility of exposure to the hazardous materials; (3) The location of and access to the MSDS's related to the hazardous chemicals located in the Work area; (4) Procedures that the Contractor's employees and any subcontractor are to follow if they are exposed to hazardous chemicals above the Permissible Exposure Limit (PEL). Material Safety Data Sheets (MSDS) may be reviewed upon request by the Contractor or any subcontractor as they pertain to the Work areas of the Project. Photocopies of the MSDS's may be made by Contractor at its expense. The Contractor and any subcontractor shall provide the University with a list of any hazardous materials that will be used on the job site that may be exposed to the University's employees. The Contractor and any subcontractor shall provide the University with copies of Material Data Sheets for materials to be used. 5.4 The Contractor shall ensure that NO asbestos-containing materials (including but not limited to: drywall, joint compound, roof mastic and floor tile adhesive) will be installed on any University project. Additionally, the Contractor shall submit MSDS sheets and have prior approval before installing any materials that contains hazardous substances or could pose an environmental hazard. If any environmental hazardous materials are installed without written approval of the Northern Kentucky University or the Commonwealth of Kentucky, the Contractor will be responsible for all material replacement cost, all removal and all other associated damages. Any materials removed shall be taken out in accordance with all applicable federal, state and local regulations.

- 9. PERMITS, LICENSES AND TAXES:** The contractor shall procure all necessary permits and licenses and abide by all applicable laws, regulations, and ordinances of all federal, state, and local governments in which work under this Contract is performed. Contractor must furnish certification of authority to conduct business in the Commonwealth of Kentucky as a condition of contract award. Such registration is obtained from the Secretary of State, who will also provide the certification thereof. However, the contractor need not be registered as a prerequisite for responding to the RFP. Contractor shall pay any sales, use, personal property, and other tax arising out of this Contract and the transaction contemplated hereby. Any other taxes levied upon this Contract, the transaction or the equipment or services delivered pursuant hereto shall be the responsibility of the Contractor. Contractor will be required to accept liability for payment of all payroll taxes or deductions required by local and federal law including (but not limited to) old age pension, social security, or annuities.
- 10. NON-DISCRIMINATION AND EQUAL OPPORTUNITY:** Contractor shall comply with NKU's nondiscrimination policy and shall not in its operations or employment practices discriminate on the basis of race, color, national origin, ethnic origin, religion, creed, age, physical or mental disability, veteran status, uniformed service, political belief, sex, sexual orientation, gender identity, gender expression, pregnancy, marital status, genetic information, social or economic status, or smoker or nonsmoker status, as long as the person complies with NKU's policy concerning smoking. Contractor is subject to and shall comply with all applicable Federal, state and local laws and regulations governing equal employment opportunity and affirmative action including, but not limited to, the Kentucky Equal Employment Act of 1978 (KRS 45.550 et. seq. of the Kentucky Revised Statutes) and the Federal requirements set forth in Titles VI and VII of Civil Rights Act of 1964, as amended; Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act of 1990, as amended; Executive Order 11246 as amended; The Age Discrimination in Employment Act of 1967, as amended; the Age Discrimination Act of 1975, as amended; The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; Title II of the Genetic Information Nondiscrimination Act of 2008, as amended; and all regulations and administrative rules established pursuant to the foregoing laws.
- 11. GENERAL WARRANTIES:** Contractor warrants that all goods shall conform to the specifications of the Contract and shall be merchantable, free from defects (including defects in design and fit) and suitable for the intended purposes. Contractor further warrants that all services shall conform to the specifications of the Contract and shall be performed in a professional and workmanlike manner. These warranties shall remain in effect for at least

one year following NKU's acceptance of the goods or services or for the duration of Contractor's standard warranty period if such period exceeds one year. The foregoing warranties are in addition to, and shall not limit, any other warranties or buyer protections that exist by operation of law.

12. **FINAL INSPECTION AND ACCEPTANCE:** NKU reserves the right to perform inspection and/or expediting of the materials and fabrication thereof at the facility of the Contractor or its suppliers at any reasonable times. All materials and services are subject to final inspection and acceptance by NKU at destination, notwithstanding any prior payments or inspection at the source. Such final inspection shall take place within thirty (30) days from the date of delivery or installation or completion of services whichever is latest. In addition to other remedies which may be available under law or in equity, when services are not delivered on the date agreed on by the Contractor and NKU, or if inferior or incomplete work is found, NKU reserves the right to reject such materials and request replacement as stated above or authorize the contractor to issue a credit based on NKU's cost for all material found unacceptable NKU, at its option may return to the Contractor any nonconforming or defective item(s), at no cost to NKU, and require correction or replacement of the item(s). If NKU does not require correction or replacement of nonconforming or defective item(s), Contractor shall repay such portion of the contract price or such additional amount as is equitable under the circumstances. The rights of NKU are in addition to and shall not be limited by Contractor's standard warranties.
13. **DELIVERY, TRANSPORTATION AND PACKAGING:** The Contractor covenants that, if awarded a contract, the Contractor shall: Adequately pack all commodities and equipment according to accepted commercial practice and according to the packing and marking instructions stated in the contract documents or purchase order. Make deliveries as stated in the contract; it is understood by the Contractor that all deliveries shall be made by the end of NKU's fiscal year in which the contract is awarded unless otherwise specified in a specific contract. Make deliveries during normal working day hours to the point or points specified in the contract documents or purchase order unless otherwise noted.
14. **FREIGHT:** NKU's freight terms are F.O.B. destination, freight prepaid and allowed. If shipment is indicated on the purchase order as freight prepaid and added, the Contractor will prepay the freight charges and, if mutually agreed to, add them to the invoice. Separate freight invoices will not be accepted. Collect shipments will be returned at Contractor's expense unless otherwise instructed by NKU
15. **WAIVER OF MECHANIC'S LIEN:** With each Application for Payment, submit waivers of mechanic's lien from entities lawfully entitled to file a mechanic's lien arising out of the Contract and related to the Work covered by the payment. Submit final Application for Payment with or proceeded by conditional final waivers from every entity involved with performance of the Work covered by the application that is lawfully entitled to a lien.
16. **COMPLETION AND LIQUIDATED DAMAGES (IF APPLICABLE)** It is understood and agreed that time is of the essence. The Contractor will efficiently, diligently, and expeditiously conduct the work in a manner that will satisfy compliance with approved project schedules and completion by the completion date appearing in the body of this bid.
17. **CHANGE ORDERS:** Work Change Proposal Requests (Change Orders) are not instructions to either stop work in progress or to execute the proposed change. Changes in the Work initiated by the University, the consultant or the contractor must be approved by the University, typically in writing via approved Construction Change Authorization (CCA), before contractor may proceed with the work. Pricing and any contract time adjustments shall be provided within specified time or 20 days when not specified, after receipt of Proposal Request. Work Change Proposal shall be all inclusive and shall include:
  - **A list of quantities of products required or eliminated and unit costs, with total amount of purchases and credits to be made. If requested, furnish survey data to substantiate quantities;**
  - **Indicate applicable taxes, delivery charges, equipment rental and amounts of trade discounts;**
  - **Include costs of labor and supervision directly attributable to the change; and,**
  - **Include any adjustment to contract schedule as a result of this change.**

Overhead and Profit for each Work Change Proposal may include up to 15% in mark-up, overhead and profit, with the split among the general contractor and any subcontractors determined by the contractor, but in no case shall the total exceed 15%. Upon approval, the CCA shall be added as a line item to the Payment Application.

18. **INTELLECTUAL PROPERTY:** Contractor represents that it has all intellectual property rights necessary to enter into and perform its obligations in this Agreement.
19. **OWNERSHIP OF WORK PRODUCT:** All work product, including any software, research, reports, studies, data, photographs, negatives or other documents, drawings or materials prepared by Contractor in the performance of its obligations under this Agreement will be deemed works for hire and the exclusive property of University. Contractor shall deliver all such materials to University upon completion, termination or cancellation of this Agreement. Any programs, data or other materials furnished by University for use by

Contractor in connection with the Services performed under this Agreement will remain University's property.

- 20. INDEMNITY:** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the University, and their agents and employees from and against all claims, damages, losses and expenses, including attorney's fees, provided that any such claim, loss, damage or expense: (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (b) is caused in whole or in part by any willful negligent act or omission of the Contractor, any Trade Contractor or material supplier, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. This basic obligation to indemnify shall not be construed to nullify or reduce other indemnification rights which the University would otherwise have. The Contractor shall also indemnify and hold harmless the University and its agents and employees from any claims relating to the Work brought against the University by any subcontractor unless such claims are due to the gross negligence or willful misconduct of the University. In any and all claims against the University, or any of their agents or employees, by any employee of the Contractor, any subcontractor, any one directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under Worker's Compensation acts, disability benefit acts or other employee acts.
- 21. INSURANCE:** Contractor shall obtain and maintain until all of its obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees, or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.

By requiring such minimum insurance, University shall not be deemed or construed to have assessed the risk that may be applicable to Contractor under Contract Number \_\_\_\_\_. Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain higher limits and/or broader coverages. The Contractor is not relieved of any liability or other obligations assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. The insurance coverages stated below do not replace any surety bonds as required by contract.

**Coverages:**

1. Commercial General Liability – ISO form CG 00 01 or its equivalent form providing equivalent liability coverage. Coverage to include:
  - Premises and Operations
  - Personal Injury/Advertising Injury
  - Products/Completed Operations
  - Liability assumed under an Insured Contract (including tort liability of another assumed in a business contract)
  - Independent Contractors
  - Designated Construction Project(s) General Aggregate Limit, ISO endorsement CG 25 03 or equivalent
  - Automatic Additional Insured-Owners, Lessees, or Contractors Endorsement, ISO endorsement CG 20 38 or equivalent
  - Additional Insured Completed Operations-Owners, Lessees, or Contractors Endorsement, ISO endorsement CG 20 37 or equivalent: Completed Operations coverage must be kept in effect for up to the statute of repose after project completion
2. Automobile Liability – Coverage to include:
  - Owned Vehicles
  - Leased Vehicles
  - Hired Vehicles
  - Non-Owned and Employee Non-Owned Vehicles
  - Personal Injury Protection (where applicable)
3. Workers' Compensation and Employers' Liability – Workers' Compensation (Coverage A) and Employers' Liability (Coverage B)
4. Professional Liability (including Design Build Errors and Omissions) – When operations or activities under the contract involve any type of design work, professional liability coverage shall be maintained by [Contractor] covering wrongful acts, errors or omissions of Contractor.
5. Contractors' Pollution Liability – University requires this coverage whenever work at issue under this Contract involves potential pollution risk to the environment or losses caused by pollution conditions, including asbestos, that may arise from the operations of the Contractor described in the Contractor's scope of services. Policy shall cover the Contractor's completed operations. Completed Operations shall be kept in effect up to the statute of repose after project completion.

Coverage shall apply to sudden and gradual pollution conditions resulting from the escape of release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants,

**Form No: NKU-2023-01**

including asbestos. If the coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract.

This coverage can be obtained through the Contractor’s commercial general liability policy by including the Limited Pollution Liability Extension ISO endorsement CG 24 15 or its equivalent.

If the contractor is responsible for the transport of any hazardous waste, the Contractor can extend the pollution liability policy to cover this exposure or the Contractor can add to the Commercial Automobile Policy by adding ISO endorsement CA 99 48 and MCS-90.

**Limits Required:** Contractor shall carry the following minimum limits of liability:

<b>Commercial General Liability</b>	
General Aggregate (Per Project Aggregate)*	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Each Occurrence Limit	\$1,000,000
Personal/Advertising Injury	\$1,000,000
Damage to Rented Premises	\$50,000
Medical Payments (Any One Person)	\$5,000
<b>Commercial Automobile Liability</b>	
Bodily Injury/Property Damage (Each Accident)	\$1,000,000
Personal Injury Protection, if applicable	Statutory
<b>Workers’ Compensation</b>	
Coverage A (Workers’ Compensation)	Statutory
Coverage B (Employers’ Liability)	\$1,000,000 \$1,000,000 \$1,000,000
<b>Umbrella Liability/Excess Liability (if required)</b>	
Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$1,000,000
Products/Completed Operations Aggregate Limit	\$1,000,000
<b>Professional Liability (if required)</b>	
Each Occurrence/Incident/Claim	\$1,000,000
Aggregate	\$2,000,000
<i>[College/University] requires [Contractor] to keep this policy in effect after completion of the project as specified in the contract.</i>	
<b>Contractors’ Pollution Liability (if required)</b>	
Per Loss	\$1,000,000
Aggregate	\$1,000,000
<i>[College/University] requires [Contractor] to keep this policy in effect after completion of the project as specified in the contract.</i>	

\* Designated Construction Project(s) General Aggregate (ISO Form CG 25 03 or its equivalent).

**Additional Requirements**

Commercial General Liability (CGL)

Commercial General Liability (CGL) must include coverage for liability arising from Products/ Completed Operations and

**Form No: NKU-2023-01**

**Liability Assumed Under an Insured Contract.**

If the CGL insurance has a general aggregate limit, then ISO endorsement CG 25 03 or its equivalent must be added. The Designated Construction Project(s) General Aggregate Limit must be maintained for the ongoing operations phase of the Project and the limit must be twice the minimum required occurrence limit.

Contractor shall name Northern Kentucky University and its Board of Regents/Trustees, officers, employees, agents, and volunteers as Additional Insureds on ISO endorsements CG 20 38 and CG 20 37 or a substitute providing equivalent coverage.

The CGL policy shall contain no endorsement or modification limiting the scope of coverage for liability arising from pollution, explosion, collapse, underground property damage, or damage to the work.

**Commercial Automobile**

Commercial automobile must be endorsed to include contractual liability coverage if it is not automatically included within the form.

**Contractors' Pollution Liability**

The contractors' pollution liability policy shall be endorsed to include the following as Additional Insureds: Northern Kentucky University and its Board of Regents/Trustees, officers, employees, agents, and volunteers named as an additional insured with respect to liability and defense of suits arising out of the activities performed by, or on behalf of the Contractor, including completed operations.

**Workers' Compensation**

Workers' Compensation policy must include NCCI endorsement WC000313 Waiver of Our Right to Recover from Others endorsement in favor of Northern Kentucky University and its Board of Regents/Trustees, officers, employees, agents, and volunteers.

If there is an exposure of injury to Contractors employees under the US Longshore and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims. The US Longshore and Harbor Workers' Compensation Act coverage is provided by NCCI endorsement WC000106A, and the Maritime Coverages are provided by NCCO endorsement WC000201A.

**All Policies**

- Must be written on a primary basis, non-contributory with any other insurance coverages and/ or self-insurance carried by [College/University].
- Must include a Waiver of Subrogation Clause.
- Must include a Separation of Insureds (Cross Liability) Clause

Notice of Cancellation: Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, or canceled except after thirty (30) days' prior written notice has been given to the University, except when cancellation is for non-payment of premium; then ten (10) days' prior notice may be given. Such notice shall be sent directly to University Director of Procurement Services, 5320 Campus Drive., AC 617, Highland Heights, KY 41099. If any insurance company refuses to provide the required notice, the Contractor or its insurance broker shall notify the University of any cancellation, suspension, or non-renewal of any insurance within seven (7) days of receipt of insurers' notification to that effect.

- 22. INSPECTION AND ACCEPTANCE OF SERVICES:** University reserves the right to inspect the Services provided under this Agreement at all reasonable times and places during the Term. If any of the Services do not conform to the requirements set forth in this Agreement, University may (i) require Contractor to perform the Services again in conformity with such requirements, with no additional charge to University; or (ii) equitably reduce payment due Contractor to reflect the reduced value of the Services performed. These remedies do not limit other remedies available to University in this Agreement or otherwise available at law.
- 23. RISK OF LOSS:** All work performed by Contractor pursuant to this Agreement will be at Contractor's exclusive risk until final and complete acceptance of the work by University. In the case of any loss or damage to the work prior to University's acceptance, such loss or damage will be Contractor's responsibility. Delivery of any goods to University pursuant to this Agreement must be FOB destination.
- 24. COMPLIANCE:** Contractor shall observe and abide by all applicable local, state and federal laws (including without limitation the Jeanne Clery Act), regulations and University policies and procedures. Contractor certifies that is has not been debarred, suspended, or declared ineligible as defined in the Federal Acquisition Regulation (FAR 48 C.F.R Ch. 1 Subpart 9.4). Contractor will immediately notify the University if the Contractor is placed on the Consolidated List of Debarred, Suspended, and Ineligible Contractors.
- 25. CONFIDENTIALITY; DATA PROTECTION** Neither Party shall disclose any confidential information obtained from the other Party without such Party's prior written approval. As applicable, Contractor shall maintain and process all information it receives in compliance with all applicable data protection/privacy laws and regulations and University policies.
- 26. PUBLICITY:** Contractor shall not use University's name, logo or other likeness in any press release, marketing material or other announcement without University's prior written approval.

- 27. **SUBCONTRACTORS:** If Contractor is permitted to subcontract any of the Services, Contractor shall ensure that each subcontractor complies with all provisions of this Agreement. Contractor will remain liable for the acts and omissions of such subcontractor(s) and the proper performance and delivery of the Services.
- 28. **PAYMENT AND PERFORMANCE BONDING:** The Contractor shall furnish security bonds in an amount equal to one hundred percent (100%) of the Contract amount as security for the performance of the Contract established and for payment of all persons performing labor, including payment of all unemployment contributions which become due and payable under Kentucky Unemployment Insurance Law, and furnishing materials, equipment, supplies, taxes, and other proper charges and expenses incurred or to be incurred in the performance of the contract. All bonds shall be executed by a surety company authorized to do business in the Commonwealth of Kentucky. The bonds shall be valid after the final payment has been made on the Contract during the guaranty period and other periods limited only by statutes of limitation. If the furnishing of performance and payment bonds is required by the Bidding Documents, the bond premiums shall be paid by the Proposer. If the furnishing of bonds is not required by the Bid Documents, but required by the Purchasing Officer subsequent to the award of Contract, the successful Proposer shall procure the bonds and the University will reimburse the Proposer for the premium cost. The University reserves the right to require all bonds be provided by a surety company with a rating of "A" or better as listed in the A. M. Best-Key Rating Guide for Property and Casualty (current edition). The Contractor shall execute the required performance and payment bonds for NKU on the date of execution of the Contract Documents between the University and the Contractor, or, with the approval of the Purchasing Official, within ten (10) calendar days after that date. Unless otherwise specified in the Bidding Documents, the bonds shall be written on the bond form bound in the bidding documents and in the number of counterparts specified by the Purchasing Official.
- 29. **TIME IS OF THE ESSENCE:** Time is of the essence in the performance of this Agreement.
- 30. **DEFAULT:** A Party will be in default of this Agreement if such Party fails to comply with any obligation in this Agreement and such failure continues for ten (10) days after receiving written notice from the non-defaulting Party. In the event of default, the non-defaulting Party, upon written notice to the defaulting Party, may terminate this Agreement as of the date specified in the notice, and may seek other relief as provided by law.
- 31. **TERMINATION FOR CONVENIENCE:** The University may terminate the Contract in accordance with the provisions of KRS 45A.210 and 200KAR 5:312. University will only be liable for payment for Services received prior to the effective date of such termination.
- 32. **NOTICE:** Any notice required or permitted by this Agreement must be in writing and addressed to the Party at the address set forth below, or such other address as is subsequently specified in writing. Notices will be effective as of the date: (i) delivered by hand, (ii) delivered by national courier service or Registered/Certified Mail, postage prepaid, return receipt requested, or (iii) received by facsimile.

<b>To University:</b>
Dept. Name: _____
Attn: _____
Address: _____
_____
<b>with a copy to:</b>
Procurement Services
Attn: Director of Procurement
1 Nunn Dr, AC 617
Highland Heights, KY 41099

<b>To Contractor:</b>
_____
Attn: _____
Address: _____
_____
<b>with a copy to:</b>
_____
Attn: _____
Address: _____
_____

- 33. **GOVERNING LAW AND JURISDICTION:** This Contract and all issues and disputes arising out of this Contract shall be governed by the laws of the Commonwealth of Kentucky without consideration of its conflicts of laws principles. Any legal action on the Contract shall be brought in the Franklin Circuit Court and shall be tried by the Court sitting without a jury.
- 34. **FUNDING CONTINGENCY:** University's performance under this Agreement may be dependent upon appropriation of funds by the Commonwealth ("Legislature") and/or allocation of funds by University's Board of Regents ("Board"). If the Legislature fails to appropriate the necessary funds or the Board fails to allocate the necessary funds, University may terminate this Agreement without liability by providing written notice to Contractor.
- 35. **WAIVER:** Waiver by either Party of a breach or violation of any provision of this Agreement will not operate as a waiver of any subsequent breach.
- 36. **SURVIVAL:** Termination or expiration of this Agreement will not affect the Parties' rights or obligations that, by their nature and context, are intended to survive termination or expiration.
- 37. **ELECTRONIC DELIVERY:** Execution and delivery of this Agreement by exchange of email containing the



signature of a Party will constitute a valid and binding execution and delivery of this Agreement by such Party.

38. **LIMITATIONS:** Terms and conditions of this Agreement will only be binding on University to the extent permitted by the Constitution and laws of the Commonwealth of Kentucky.
39. **NO FRAUD VIOLATIONS:** Contractor affirms that it has not been administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds and that it does not employ officers or employees that have been convicted of, or pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds.
40. **FORCE MAJEURE:** The performance of this Agreement is subject to acts of God, including fire, storms, and floods; war; orders, requisitions or necessity of the government; domestic and/or international threats or acts of terrorism; disasters; riots; rebellions; strikes or other labor disputes; civil disorder; epidemics, pandemics, such as COVID-19 or any disease having a similar effect; any other national or regional emergency; curtailment of transportation facilities beyond the Parties' control; or any other cause not enumerated herein but which is beyond the reasonable control of the Party whose performance is affected and which makes it illegal, impossible, or impracticable for such Party to perform its duties and obligations under this Agreement (collectively, a "Force Majeure Event"). A Party may suspend performance of this Agreement during the occurrence of a Force Majeure Event if it is unable in good faith to perform its duties and obligations under this Agreement due to that Force Majeure Event. Additionally, if a Force Majeure Event lasts longer than thirty (30) continuous days then this Agreement may be terminated by the Party affected by such a Force Majeure Event, provided however, that the Parties are liable for and shall be required to perform the duties and obligations that arose prior to such Force Majeure Event.
41. **MISCELLANEOUS PROVISIONS (41 - 51):** The University and Contractor respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither University nor Contractor shall assign this Agreement without the prior written consent of the other.
42. The Contractor represents and warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the Contractor) to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation individual or firm (other than a bona fide employee working solely for the Contractor) any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. Contractor affirms that, to the best of Contractor's knowledge, there exist no conflicts of interest between the Contractor and NKU or its employees as defined by all applicable Kentucky Revised Statutes and NKU's ethics and compliance policies and procedures. In the event of change in Contractor's interests, Contractor shall inform NKU regarding any conflicts of interest that are likely to arise as a result of such change. Contractor hereby represents that it has not participated in any illegal or unethical conduct in connection with the Contract. If, at any time, NKU determines the Contractor is in violation of the forgoing representation, NKU may cancel the contract upon written notice to the Contractor and NKU shall have no further obligation to the Contractor
43. Foreign corporations are defined as corporations that are organized under laws other than the laws of the commonwealth of Kentucky. Foreign corporations doing business within the commonwealth of Kentucky are required to be registered with the Secretary of State, New Capitol Building, Frankfort, Kentucky and must be in good standing. The Foreign Corporate Proposer, if not registered with the Secretary of State at the time of the bid submittal, shall be required to become registered and be declared in good standing prior to the issuance or receipt of a contract.
44. All contractors performing work for NKU must possess a Campbell County Occupational License and a city of Highland Heights Occupational License (administered by Campbell County) and must also pay applicable payroll taxes. For further information, call 859-572-6605.
45. University is an equal opportunity institution and, as such, encourages the use of Minority Business Enterprises ("MBEs") in the provision of construction related services. MBEs should have a fair and equal opportunity to compete for dollars spent by the Commonwealth of Kentucky to procure construction-related services. Competition ensures that prices are competitive and a broad vendor base is available.
46. All Attachments referenced herein are attached hereto and incorporated herein by reference.
47. The Contractor, as defined in KRS 45A.030 (9) agrees that the University, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission of the Commonwealth of Kentucky, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this Contract for the purpose of financial audit or program review. Furthermore, any books, documents, papers, records, or other evidence provided to the University, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission of the Commonwealth of Kentucky which are directly pertinent to the Contract shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted

**Form No: NKU-2023-01**

and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1)(c) prior to the execution of the Contract. The Secretary of the Finance and Administration Cabinet shall not restrict the public release of any information that would otherwise be subject to public release if a state government agency were providing the service. (22 Ky.R. 1510; eff. 5-16-96; 30 Ky.R. 682; 1468; eff. 1-5-2004.)

- 48. Any waiver by either party of any provision or condition of this Contract shall not be construed or deemed to be a waiver of any other provision or condition of this Contract, nor a waiver of a subsequent breach of the same provision or condition.
- 49. If any section, subsection, sentence or clause of this Contract shall be deemed to be illegal, invalid or unenforceable for any reason, such illegality, invalidity or unenforceability shall not affect the legality, validity or enforceability of other sections of this Contract.
- 50. This Contract and any Exhibits to this Contract represent the entire understanding and agreement between the parties hereto and supersedes any and all prior agreements, whether written or oral, that may exist between the parties concerning the Work. Any modifications to this Contract shall be in writing and shall be signed by the University and the Contractor.
- 51. **Modification of this Contract requires approval Procurement Services**

**Insurance Requirements Waiver** – IF the Insurance Requirements are not applicable to the Services or if University otherwise chooses to waive such requirements for purposes of this Agreement, the appropriate University representative from the Department of Procurement Services and may waive the requirements by initialing here: \_\_\_\_\_ Otherwise, Contractor must satisfy the Insurance Requirements specified in this Agreement.

<b>Northern Kentucky University:</b>	<b>Contractor:</b>
Signature: _____	Signature: _____
Printed Name: _____	Printed Name: _____
Title: _____	Title: _____
Date: _____	Date: _____