

Northern Kentucky University

General Terms and Conditions

SECTION 1 – DEFINITIONS

“Authorized Employees” means Contractor’s employees or work force members (as defined by 45 C.F.R. 160.103) who have a need to know or otherwise access NKU Data to enable Contractor to perform its obligations under this Agreement.

“Authorized Persons” means (i) Authorized Employees; and (ii) Contractor’s contractors, agents, outsourcers, and auditors who have a need to know or otherwise access University Data to enable Contractor to perform its obligations under this Agreement, and who are bound in writing by confidentiality and data protection obligations, including, without limitation, those set forth in a business associate agreement, sufficient to protect University Data in accordance with the terms and conditions of this Agreement.

“Contract” means the entire written agreement between the parties including, but not limited to, the Invitation for Bid or Request for Proposal and its specifications, terms, and conditions, solicitation instructions, solicitation addenda, contractor’s offer, the contract document, and contract amendments if any, including, without limitations, these General Terms and Conditions and the purchase order or price agreement document excluding correspondence of any type unless specifically accepted by both parties in writing.

“Contractor” means a person, company, corporation, organization or other legal entity with whom NKU has executed a Contract.

“NKU” means Northern Kentucky University.

“NKU Data” means any information, in an electronic, written, or oral form, that is made available to the Contractor by NKU. NKU Data includes, but is not limited to, PII, trade secrets, sales and marketing plans, financial data, supplier information, and intellectual property.

“Personally Identifiable Information (PII)” means any information about an individual, including (1) any information that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII, includes, but is not limited to, Personal Information as defined by KRS 61.931(6).

SECTION 2 – APPLICABILITY OF TERMS AND CONDITIONS

These terms are in addition to the terms and conditions set forth in any solicitation document and/or purchase agreement and should be read in conjunction with the same unless the document indicates otherwise. To the extent that Contractor terms and conditions conflict with NKU’s General Terms and Conditions, the latter shall control. A party’s failure to insist upon the performance of any provision of these General Terms and Conditions shall not be construed as a waiver of that party’s present or future right to such performance and each party’s obligation shall continue in full force and effect.

SECTION 3 – PROVISIONS BY REFERENCE

It is mutually agreed by and between NKU and the Contractor that NKU's acceptance of the Contractor's offer by the issuance of a Purchase Order or Contract shall create an agreement between the parties thereto containing the following:

- 1) All specifications, terms and conditions in the solicitation document except as amended in the contract.
- 2) The provision of the awarded contract to include all terms, special conditions, specifications, and the Contractor's offer.
- 3) NKU's General Terms and Conditions.

Unless otherwise specified, in the event of any conflicts, the documents shall control in the following order:

- 1) the written contract or purchase order (if any);
- 2) Contractor's exceptions, if expressly accepted by NKU;
- 3) the RFP, bid or other solicitation document;
- 4) NKU's General Terms and Conditions; and
- 5) Contractor's offer.

SECTION 4 – CONTRACTOR'S INDEPENDENCE AND RESPONSIBILITIES

Contractor is solely responsible for the fulfillment of the contract with NKU. Contractor agrees that all persons working for or on behalf of the Contractor whose duties bring them on campus shall abide by the rules and regulations that are established by NKU and shall comply with the reasonable directions of NKU's officers. Contractor's employees shall not use existing areas where not required to perform the work.

Contractor shall be responsible for the acts of his employees and agents while on campus. Accordingly, Contractor agrees to take all necessary measures to prevent injury and loss to persons or property located on campus. Contractor shall be responsible for all damages to persons or property caused by Contractor or any of his agents or employees. Contractor shall promptly repair any damage that he, or his employees or agents may cause to the campus or to University equipment.

Contractor and its agents, subcontractors, and representatives shall be independent contractors and not act as agents of NKU. All persons furnished or retained by Contractor in connection with any contract shall be considered employees or agents of the Contractor.

Contractor shall control all employee conduct while on NKU's premises. Any employee under the influence of alcohol or controlled substances, other than prescription medications, shall not be allowed on the premises of NKU and shall be permanently dismissed if found to be so.

Further, offensive language, sexual or other types of harassment of students, employees or visitors to NKU campus could result in immediate and permanent dismissal of the offending person(s) from the NKU site.

Contractor shall comply with the NKU's tobacco-free policy. This policy prohibits the use of all tobacco products in all campus buildings and outside areas on campus.

The possession of, use or storage of any firearm, ammunition, explosive device (including fireworks), or other deadly weapon in any form is prohibited on any NKU property or in any facility or on any property owned, leased, or operated by NKU, except as permitted by law (K.R.S. 527.020).

Contractor shall furnish NKU with written documentation that verifies each of their employees working on the property of NKU has cleared a background check, has no felony convictions, is not a sex offender, and has the legal right to work in the United States.

SECTION 5 - 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.

SECTION 6 – INDEMNIFICATION

The Contractor shall indemnify, hold and save harmless NKU, its affiliates and subsidiaries and their officers, agents, and employees from losses, claims, suits, actions, expenses, damages, costs (including attorney fees of attorneys of NKU's choice and court costs) expenses, all liability of any nature or kind arising out of or relating to the Contractor's performance hereunder. This clause shall survive the termination of any contract for as long as necessary to protect NKU.

SECTION 7 – GOVERNING LAW AND FORUM

Contractor shall conform to and observe all laws, ordinances, rules and regulations of the United States of America, Commonwealth of Kentucky and all other local governments, public authorities, boards or offices relating to the property or the improvements upon same (or the use thereof) and will not permit the same to be used for any illegal or immoral purposes, business or occupation. The resulting contract shall be governed and construed by Kentucky law and any claim relating to this contract shall only be brought in the Franklin Circuit Court in accordance with KRS 45A.245.

SECTION 8 – TERMINATION OF CONTRACT

NKU can terminate this Contract according to 200 KAR 5:312.

TERMINATION FOR CONVENIENCE

NKU reserves the right to terminate the resulting contract without cause with a thirty (30) day written notice. Upon receipt by the Contractor of a "notice of termination," Contractor shall discontinue all services with respect to the applicable contract. The cost of any agreed upon services provided by Contractor will be calculated at the agreed upon rate prior to a "notice of termination" and a fixed fee contract will be pro-rated (as appropriate).

TERMINATION FOR DEFAULT

Default

NKU may terminate the resulting contract for non-performance, as determined by NKU, for such causes as, but not limited to:

- Failure to perform the Contract according to its terms, conditions and specifications;
- Failure to make delivery within the time specified or according to a delivery schedule fixed by Contract;
- Late payment or nonpayment of bills for labor, materials, supplies, or equipment furnished in connection with a Contract for construction services as evidenced by mechanics' liens filed pursuant to the provision of KRS Chapter 376, or letters of indebtedness received from creditors by the purchasing agency; or
- Failure to diligently advance the work under a Contract for construction services;
- The filing of a bankruptcy petition by or against the contractor; or
- Actions that endanger the health, safety or welfare of the Commonwealth or its citizens.

Demand for Assurances

In the event NKU has reason to believe Contractor will be unable to perform under the Contract, it may make a demand for reasonable assurances that Contractor will be able to timely perform all obligations under the Contract. If Contractor is unable to provide such adequate assurances, then such failure shall be an event of default and grounds for termination of the Contract.

Notification

NKU will provide ten (10) calendar days written notice of default. Unless arrangements are made to correct the non-performance issues to NKU's satisfaction within ten (10) calendar days, NKU may terminate the contract by giving thirty (30) days' notice, by registered or certified mail, of its intent to cancel this contract.

SECTION 9 – MODIFICATION OF CONTRACT

NKU reserves the right to add, delete, or change related items or services to any contract. No modification or change of any contract provision shall be made, unless such modification is mutually agreed to in writing by the Contractor and NKU, and incorporated as a written modification to the Contract.

Memoranda of understanding and correspondence shall not be interpreted as a modification to or part of the Contract, unless specifically agreed to by both parties.

SECTION 10 – INSURANCE

1. The Contractor shall furnish the Owner the Certificates of Insurance or other acceptable evidence that insurance is effective, and guarantee the maintenance of such coverage during the term of the Contract. The Contractor shall provide an original policy endorsement of its CGL insurance naming Northern Kentucky University and the directors, officers, trustees and employees of NKU as additional insureds on a primary and non-contributory basis as their interest appears. Additionally, the Contractor shall provide an original policy endorsement for Waiver of subrogation in favor of the Northern Kentucky University its directors, officers, trustees, and employees as additional insured.
2. The Contractor shall provide all certificates of insurance and endorsements to the Owner with the bidding documents, failure to provide these documents may nullify the Contractor's bid. The Contractor shall not commence, nor allow any Subcontractor to commence Work under this Contract, until the Owner has reviewed the certificates and approved coverages and limits as satisfying the requirements of the bidding process.
3. Worker's Compensation and Employers' Liability Insurance

The Contractor shall acquire and maintain Workers' Compensation insurance in accordance with Kentucky's statutory limits and Employers' Liability insurance with at least \$100,000 limits of liability for all employees who will be working at the Project site. In the event any Work is sublet, the Contractor shall require any Subcontractor to provide proof of this insurance for the Subcontractors' employees, unless such employees are covered by insurance provided by the Contractor.

4. Public Liability Insurance

The Contractor shall acquire and maintain a Broad Form Comprehensive General Liability (CGL) Insurance Policy including premises - operations, products/completed operations, blanket contractual, broad form property damage, real property fire legal liability, and personal injury liability coverage. The Insurance Policy must be on an "occurrence" form only, unless approved by the Owner. Contractual liability must be endorsed to include defense costs. Products and completed operations insurance must be carried for two years following completion of the Work. Policies which contain Absolute Pollution Exclusion endorsements are not acceptable. Coverage must include pollution from "hostile fires". Where required by the risks involved, Explosion, Collapse and Underground (XCU) coverages shall be added by endorsement. If the Work involved requires the use of aircraft or helicopters, a separate aviation liability policy with limits of liability of at least \$10,000,000 will be required.

- A. The limits of liability shall not be less than \$500,000 each occurrence combined single limits for bodily injury and property damage. If split limits are used, they shall not be less than \$500,000 for each person and each occurrence for bodily injury and \$250,000 for each occurrence for property damage.
- B. The Contractor shall either:
 - 1) Require each Subcontractor to procure and maintain insurance of the type and limits stated during the terms of the Contract, or,
 - 2) Insure the activities of such Subcontractors under a blanket form as shown above.

5. Riggers Liability Extension Endorsement

Should Subcontractor's work involve the moving, lifting, lowering, rigging, or hoisting of property or equipment, Subcontractor shall carry Rigger's Liability Insurance to insure against physical loss or damage to the property or equipment.

6. Comprehensive Automobile Liability Insurance

The Contractor shall show proof and guarantee the maintenance of insurance to cover all owned, hired, leased or non-owned vehicles used on the Project. Coverage shall be for all vehicles including off the road tractors, cranes and rigging equipment and include pollution liability from vehicle upset or overturn. Policy limits shall not be less than \$500,000 for combined single limits for bodily injury and property damage for each occurrence. As an alternative, split limits of not less than \$500,000 for bodily injury and \$100,000 for property damage for each occurrence shall be maintained.

7. Excess Liability Insurance

The Contractor shall acquire and maintain a policy of excess liability insurance in an umbrella form for excess coverages over the required primary policies of broad form comprehensive general liability insurance, comprehensive automobile liability insurance and employers' liability insurance. This policy

shall have a minimum of \$1,000,000 combined single limits for bodily injury and property damage for each occurrence in excess of the applicable limits in the primary policies. The excess liability policy shall not contain an absolute pollution exclusion and shall include coverages for pollution that may occur due to hostile fires and vehicle upset and overturn. The limits shall be increased as appropriate to cover any anticipated special exposures.

8. Builders Risk Insurance

Contractor shall procure and maintain builders risk insurance to cover "all risk" perils on a completed value form in an amount of protection of not less than 100% of the Contract amount. Builders Risk Insurance shall include coverage for the perils of earth movement and flood and the coverage shall not be voided in the event of partial occupancy. The testing exclusion must be deleted from the policy.

Insurance Agent and Company Insurance as required in the bidding process of the Project, shall be written according to applicable state law in Kentucky. The policies shall be written by an insurer duly authorized to do business in Kentucky in compliance with KRS 304.1-110.

If Contractor will access NKU Student, Employee, or other personal records, vendor needs Security and Privacy Liability Insurance with limits no less than \$1,000,000 and Evidence Breach Response Services coverage with limits no less than \$5,000,000.

SECTION 11 – 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.

SECTION 12 – OPEN RECORDS

Any contract NKU, and all related information and documentation may be subject to public disclosure under the Kentucky Revised Statutes 61.870 et. seq. Contractor is hereby notified that NKU strictly adheres to this statute and the interpretations rendered by the courts and the Kentucky Attorney General. As such, if Contractor has Confidential Information it must be clearly marked. Contractor shall be deemed to have knowledge of this law and the means of protecting Contractor's legitimate interests.

SECTION 13 – CONFLICTS OF INTEREST

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.

SECTION 14 – 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.

SECTION 15 – 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.

SECTION 16 – 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.

SECTION 17 – 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.

SECTION 18 – PAYMENT CARD INDUSTRY – DATA SECURITY STANDARD REQUIREMENTS (PCI-DSS)

Contractor shall be required to comply with the Gramm-Leach-Bliley Act (GLBA). To the extent any purchase includes services, including support, such that the provider of the service (defined in the GLBA as “Service Provider”) may receive “customer information” through the course of contracted activities with NKU, Service Provider agrees to the following additional terms and conditions:

- (a) Throughout the term of this Agreement, Service Provider shall implement and maintain “appropriate safeguards”, as that term is used in § 314.4(d) of the FTC Safeguard Rule, 16 C.F.R. § 314, for all “customer information,” as that term is defined in 16 C.F.R. § 314.2(b), received by Service Provider pursuant to this Agreement.
- (b) Service Provider shall promptly notify NKU, in writing, of each instance of (i) unauthorized access to or use of any customer information that could result in substantial harm or inconvenience to a customer of NKU or (ii) unauthorized disclosure, misuse, alteration, destruction or other compromise of any customer information. Within 30 days of the termination or expiration of this Agreement, Service Provider shall destroy all records, electronic or otherwise, in its or its agents' possession that contains such customer information and shall deliver a written certification of the destruction to NKU.
- (c) Service provider consents, upon reasonable advance notice, to University's right to conduct an on- site audit of Service Provider’s security program.
- (d) Notwithstanding any other provisions of this Agreement, University may terminate this Agreement for cause if Service Provider has allowed a material breach of its security program, if Service Provider has lost or materially altered customer information, or if NKU reasonably determines that Service Provider’s security program is inadequate.
- (e) Service Provider shall defend, indemnify, and hold harmless 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 any allegations of security breaches, violations of the Safeguard Rule caused by Service Provider’s negligence, intentional acts or omissions, or any loss or material alteration of customer information.
- (f) Service Provider shall reimburse NKU for any damages, including but not limited to any costs required to reconstruct lost or altered information, resulting from any security breach, loss, or alteration of customer information.

Contractor hereby agrees as follows:

- (a) Contractor shall be responsible for the security of cardholder data that it possesses, even temporarily, including any functions relating to storing, processing and transmitting of cardholder data on behalf of NKU.
- (b) In the case of a payment processing system and/or equipment purchased from Contractor that is covered by PA DSS (Payment Application Data Security Standard), Contractor warrants and represents that its software and/or equipment shall not impede NKU’s PCI

DSS (Payment Card Industry Data Security Standard) compliance efforts. In the event that Contractor's software and/or equipment does impede such efforts, NKU may, in its sole discretion, upon thirty (30) days' notice and opportunity to cure, terminate this Agreement, with any prepaid amounts refunded to University on a pro-rata basis.

- (c) Contractor warrants and represents that, as of the effective date of this Agreement, it has complied 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. Contractor agrees to supply the current status of its PCI DSS compliance, and evidence of its most recent validation of compliance, upon execution of this Agreement. Further, Contractor must supply to NKU a new status report and evidence of validation of compliance at least annually and upon request by NKU. Contractor will immediately notify NKU if it learns that it is no longer PCI DSS compliant and will immediately report to NKU the steps being taken to remediate the non-compliance status. In no event should Contractor's notification to NKU be later than seven (7) calendar days after Contractor learns it is no longer PCI DSS compliant. Failure to maintain PCI DSS compliance shall be a breach of contract and NKU may, at its sole discretion, terminate this Agreement if Contractor does not become compliant within thirty (30) days, with any prepaid amounts refunded to University on a pro-rata basis.
- (d) Contractor warrants and represents that, as of the effective date of this Agreement; it has complied with all applicable requirements for validation with the PA DSS (Payment Application Data Security Standard) for its payment processing system. Contractor agrees to supply evidence of its most recent validation upon execution of this Agreement. Further, Contractor agrees to maintain PA DSS validation for the installed payment processing system version throughout the term of any maintenance agreement with NKU. If the PA DSS validation deadline for the payment system lapses, Contractor acknowledges that it shall be in breach of this Agreement and NKU may, at its sole discretion, terminate this Agreement if Contractor does not become compliant within thirty (30) days, with any prepaid amounts refunded to University on a pro-rata basis.
- (e) While doing business in University facilities or on its property, if credit card payments will be processed over the internet via the Contractors own system and/or equipment and through its own merchant account, Contractor will provide its own internet connection to process such payments, and will not be permitted to use NKU network and equipment.

SECTION 19 - COPYRIGHT OWNERSHIP AND TITLE TO DESIGNS AND COPY

Contractor and NKU both consider the products and results of the services to be rendered by Contractor to be a work made for hire. Contractor acknowledges and agrees that the work and all rights therein, including, without limitation, copyright, belongs to and shall be the sole and exclusive property of NKU. For any work that is not considered a work made for hire under applicable law, title and copyright ownership shall be assigned to NKU.

Title to all dies, type, cuts, artwork, negatives, positives, color separations, progressive proofs, plates, copy, and any other requirement not stated herein required for completion of the finished product for use in connection with any University job shall be the property of and owned by NKU. Such items shall be returned to the appropriate department upon completion and/or delivery of work unless otherwise authorized by NKU. In the event that time of return is not specified, Contractor shall return all such items to the appropriate University department within one week of delivery.

SECTION 20 - PROPRIETARY INFORMATION, DATA DUPLICATION, AND DISCLOSURE

Contractor agrees that any information disclosed from NKU to the Contractor for the purpose of any Contract shall be used only in the performance of the Contract. Contractor will keep information confidential, will not disclose it to any third party except as authorized by NKU, and will only disclose it to those within its organization who need to use it in performance of the Contract. Upon completion or termination of this Contract, Contractor shall return all such information to NKU or make such other disposition thereof as may be directed or approved by NKU.

No item furnished under this contract, or tools, plans, designs or specifications for producing the same which have been specifically designed for by NKU shall be duplicated or used by Contractor. Upon completion or termination of this contract, Contractor shall return all items, tools, plans, designs or specifications to NKU or make such other disposition thereof as may be directed by or approved by NKU.

Contractor agrees that it will not, without prior written approval of NKU, publicize this Contract or disclose, confirm or deny any details thereof to third parties, or use NKU's name in connection with Contractor's sales promotion or publicity without prior written approval of NKU.

Nothing in this provision shall restrict Contractor's right to use or disclose any information which is or becomes generally known to the public without breach of this provision by Contractor, or is rightfully obtained without restriction from other sources.

SECTION 21 - CONTRACTOR'S RESPONSIBILITY FOR RECORDS, AUDITS AND REPORTS

Contractor shall retain all records and documents and shall provide unlimited access, at all reasonable times and upon reasonable notice, to all accounting records and supporting documentation relating to the goods and services furnished during any contract and for a period of five (5) years thereafter, unless required to be retained for a longer period by state or federal statute. Should such audit disclose incorrect billings or improprieties, NKU reserves the right to charge the Contractor for the cost of the audit and pursue appropriate reimbursement.

SECTION 22 – BREACH OF UNIVERSITY DATA OR TREATMENT OF PERSONAL INFORMATION

To the extent Contractor receives Personal Information as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931-934 (the "Act"), Contractor shall secure and protect the Personal Information (and ensure the same of its agents or subcontractors having access to the Personal Information) by, without limitation:

- (i) complying with all requirements applicable to non-affiliated third parties as set forth in the Act;
- (ii) utilizing security and breach investigation procedures that are appropriate to the nature of the Personal Information disclosed, at least as stringent as University's and reasonably designed to protect the Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction or that meet industry standard practices for protecting Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction;
- (iii) notifying NKU of a security breach relating to Personal Information in the possession of Contractor or its agents or subcontractors within seventy-two (72) hours of discovery of an actual or suspected breach unless the exception set forth in KRS 61.932(2)(b)2 applies and Company abides by the requirements set forth in that exception;
- (iv) paying all costs of notification, investigation and mitigation in the event of a security breach of Personal Information caused by the actions or inactions of Contractor ("NIM Costs");

(v) cooperate with NKU in complying with the response, mitigation, correction, investigation and notification requirements of the Act including undertaking a prompt and reasonable investigation of any security breach; and

(vi) at NKU's discretion and direction, handling all administrative functions associated with notification, investigation and mitigation, in accordance with the Act's requirements. The Contractor agrees that NKU may withhold payment(s) owed to the Contractor for any violation of these identity theft prevention reporting requirements or failure to pay NIM Costs.

SECTION 23 - GENERAL DATA PROTECTION REGULATION 2016/679 ("GDPR")

The Contractor shall comply in all respects with applicable data protection laws and shall cooperate to ensure that all required consents, notifications and security measures are in place and all personal data is processed in accordance with applicable laws, including GDPR. If the Contract requires NKU to transfer personal data to the Contractor, then the additional terms and conditions for a data importer located at: [Addendum to General Data Protection](#) will apply and are incorporated by reference.

SECTION 24 – AUDITING OF NKU DATA

Contractor represents and warrants that it maintains adequate internal audit functions to annually assess internal controls in its environment, and to protect the security and confidentiality of any of University's data. Contractor agrees to provide documentation regarding its internal controls to University upon request. Contractor will provide to University all internal or external audit reports, certifications, information, documentation, electronic records and data regarding Contractor's internal controls, and if requested by University, Contractor will grant University and its University agents or subcontractors, the right to audit Contractor's operations, systems and software to confirm internal controls are present and operating.

If the information presented to University regarding Contractor's internal controls is not acceptable to University in its reasonable discretion, Contractor agrees that it will undertake, at its sole cost and expense, an independent SSAE 16 Type II audit or comparable independent attestation to confirm Contractor's controls over its processes. Contractor shall present an action plan acceptable to University, to correct any and all portions of the systems, software, products, documentation, or internal - 6 - controls. Contractor shall undertake all activities relating to its preparation of the action plan, and to its correction of any inadequate controls or mitigation of risks revealed by deficiencies in its internal controls at Contractor's sole cost and expense and within a reasonable time period as agreed upon by University. Should Contractor fail to provide adequate internal controls as described in the Contract, or to present an action plan acceptable to University within the mutually agreed upon time frame, University shall be entitled, in its sole discretion, to terminate the Contract with no liability whatsoever to Contractor upon written notice to the Contractor.

SECTION 25 – ASSIGNMENT AND SUBCONTRACTING

Contractor may not assign or delegate its rights and obligations under any contract in whole or in part without the prior written consent of NKU. Any attempted assignment or subcontracting shall be void.

SECTION 26 – USE OF NAMES AND LOGOS IN ADVERTISING

Contractor agrees not to make reference to this Contract, use NKU's name in any advertising or promotion, or use any NKU logos without the expressed written consent of NKU.

SECTION 27 – FORCE MAJEURE

Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

SECTION 28 – RESPONSIBILITY WITH FEDERALLY FUNDED CONTRACTS

Contractors and subcontractors, receiving payments from NKU via federally awarded contracts, shall comply with all applicable laws and regulations related to equal opportunity and nondiscrimination.

Contractor shall abide by the requirements of 41 CFR §§ 60-1.4(a). Among other things, this regulation prohibits discrimination against qualified individuals because of race, color, religion, sex, sexual orientation, gender identity or national origin (see specifics below).

Contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals based on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

Contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

During the performance of this Contract, Contractor agrees as follows:

(a) Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity or national origin. Such action shall include, but not be limited to the following: employment, - 11 - upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(b) Contractor will, in all solicitation or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity or national origin.

(c) Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Contractor's legal duty to furnish information.

(d) Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other Contract or understanding, a notice advising the said labor union or workers' representative of Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

(e) Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

(f) Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(g) In the event of Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations or orders, this Agreement may be cancelled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further Government Contracts or Federally-assisted construction Contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(h) Contractor will include the provisions of paragraphs (1) through (8) of Section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(i) **Debarred, Suspended and Ineligible Status:** 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.

SECTION 29 – 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 Owner 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.