

**BOARD OF TRUSTEES OF NORTHERN ILLINOIS UNIVERSITY
PURCHASE ORDER TERMS AND CONDITIONS**

Throughout these Purchase Order Terms and Conditions (“Terms and Conditions”), the Board of Trustees of Northern Illinois University and all of its members, officers, trustees, employees, volunteers and agents, shall be referred to as “University” and the seller or service provider shall be referred to as “Vendor.”

SECTION I: GENERAL TERMS AND CONDITIONS

A. APPLICABILITY. Section I of these Terms and Conditions shall apply to all purchases made by the University’s Procurement Services department or otherwise using a University purchase order, unless the provisions are superseded by terms in Sections II, as applicable, or another written agreement governing the relationship of the parties dictates otherwise.

B. CONTRACT DEFINED. The complete and exclusive agreement regarding the subject matter transaction ("Contract") includes: any separately signed agreement; the purchase order and all change orders issued by University; these Terms and Conditions; the State of Illinois Standard Certifications, Financial Disclosures and Conflicts of Interest Form, located at <https://www.illinois.gov/cpo/HigherEd/Pages/Forms.aspx>; and Additional Northern Illinois University Certifications as found on the University website at <http://qa2.niu.edu/procurement2/new-vendors/terms-conditions.shtml>, which are hereby incorporated by reference. To the extent there is a conflict between the terms in any separately signed agreement and any of these Terms and Conditions, the terms of the signed agreement shall govern. Any additional or conflicting terms contained in any document issued by Vendor in connection with this Contract shall not be binding on University unless University expressly agrees in writing.

C. INDEPENDENT CONTRACTOR. Vendor shall perform the services as an independent contractor and shall not be considered an employee or agent of the University for any purpose.

D. VENDOR PERFORMANCE. Vendor represents and warrants that (i) it and its employees, agents and subcontractors have the qualifications and skills necessary to perform the specified services under this Contract in a competent and professional manner; (ii) it has the full right and power to enter into and fully perform this Contract in accordance with its terms; (iii) the execution, delivery, and performance of this Contract will not infringe upon the rights of any third party or violate the provisions of any agreement to which it is a party; (iv) it and its employees, agents and subcontractors will comply with all applicable federal, state and local laws, rules and regulations in providing or performing the services, as such laws, rules and regulations may be amended from time to time, including, but not limited to, the Family Educational Rights and Privacy Act (20 U.S.C. §1232(g)) and the Illinois Personal Information Protection Act (815 Ill. Comp. Stat. 530); (v) it will comply with all financial and administrative requirements prescribed by Illinois law and University rules and regulations; and (vi) the services will conform to the standards applicable in the field or

industry.

E. WARRANTIES. Vendor warrants that (i) it has free and clear title to all products provided hereunder; and (ii) such products (a) comply with University's specifications, (b) have been manufactured in compliance with and conform to all applicable laws, (c) are free from defects in design, materials and workmanship, and (d) do not infringe on any patent, copyright, trademark, trade name, service mark or any other proprietary right of any third party. If any product breaches any of the warranties in this Section, Vendor shall promptly replace such product with a substitute product that conforms to the requirements set forth in this Contract and the University's specifications at no additional cost to University, delivered to the same destination as the original shipment. In the event that Vendor is unable to replace the product as required in this Section within a commercially reasonable time, University shall be entitled to recover its damages, including the reasonable cost of purchasing substitute product. University's rights and remedies set forth herein shall be cumulative and in addition to all other rights and remedies available to University in law or equity.

F. INSPECTION AND ACCEPTANCE. University shall have five (5) business days to accept or reject the services and/or deliverables in writing. No deemed acceptance will apply. The University may reject the services and/or deliverables at its sole discretion. If rejected, the University will provide written comments as to requested changes and the applicable services and/or deliverables will be re-performed by Vendor within a time period to be determined by University. If the services and/or deliverables are subsequently rejected by University, the University may, at its sole discretion, require re-performance by Vendor, or may utilize an alternate service provider to complete the services and/or deliverables, and will be reimbursed for such costs by Vendor.

G. COMPENSATION AND EXPENSES. Total fees and expenses under the Contract shall not exceed the University's prior written approval and the amount of its purchase order or change order covering such payments. Vendor shall send invoices to: Northern Illinois University, General Accounting, Lowden Hall 204, DeKalb, Illinois 60115 via email (AccountsPayableSrvs@niu.edu) or fax ((815)753-2007), and submit invoices in accordance with any instructions provided by University, including any instructions set forth on University's purchase order. University shall make payment to Vendor within thirty (30) days of receipt of proper invoice that includes the information necessary for processing the payment as specified by the University. Payment for all or part of the services, products or deliverables shall not constitute acceptance. Interest on late payment(s) shall be paid in accordance with the State Prompt Payment Act (30 ILCS 540). If applicable, any actual travel costs and expenses (i.e., without mark-up), must be pre-approved in writing by University and be in compliance with the Higher Education Travel Control Board rules (<https://www.stateuniv.state.il.us/travel>). Vendor shall provide University with appropriate and complete documentation (e.g., receipts, invoices marked "Paid in Full") upon University's request in connection with any expense reimbursement sought by Vendor in connection with this Agreement. University has the right to audit all invoices presented.

H. TAXES. University is generally exempt from the payment of taxes and shall not be obligated to pay any taxes from which it is exempt.

I. TERMINATION. University may terminate the Contract, or any portion of products or services thereof, by giving Vendor written notice of the termination date. If University does not indicate a termination date in the notice, the Contract will terminate as soon as Vendor receives the notice. Vendor shall immediately cease services then in effect as directed by the University. University shall pay Vendor on a pro rata basis for services completed up to the effective date of termination. Any amounts prepaid to Vendor by University for services not completed as of the effective date of termination shall be refunded to the University by Vendor.

J. TITLE/RISK OF LOSS. Title to supplies and risk of loss shall pass to the University upon delivery at final destination and acceptance by University; all shipments must be fully insured by Vendor unless otherwise stated; and Vendor shall bear freight costs unless otherwise stated.

K. INTELLECTUAL PROPERTY. Vendor agrees that immediately upon creation University owns all right, title and interest in and to the reports, designs, plans, specifications, drawings, inventions, processes, and other information, work product, deliverables or items produced by Vendor, its employees, agents or subcontractors while performing services under the Contract (collectively, “**Work Product**”) as “works made for hire” (as defined in the U.S. Copyright Act of 1976, as amended, and for purposes of all other copyright laws throughout the world), and any and all related copyrights, patents, trademarks and other intellectual property rights (collectively, “**Proprietary Rights**”) in such Work Product. If, for any reason, any of the Work Product is not found to have been created as works made-for-hire, Vendor hereby assigns immediately upon creation to University Vendor’s entire right, title and interest in all Work Product and all Proprietary Rights in Work Product. Vendor shall execute any documents in connection with such assignment that University may reasonably request. Vendor shall enter into agreements with its employees, agents and subcontractors as necessary to establish University’s sole ownership in Work Product and Proprietary Rights, and upon request, Vendor shall provide University with copies of such agreements.

L. OTHER UNIVERSITY PROPERTY. All information, data and materials, including but not limited to, any written, printed, graphic, or electronically or magnetically recorded information furnished by University for Vendor’s use are the sole property of University.

M. CONFIDENTIALITY. Vendor shall maintain all of University’s proprietary and/or confidential information in confidence, and shall not disclose it, by any means, to any person, unless disclosure is required in the performance of services under the Contract. Proprietary and/or confidential information includes information that is marked or otherwise identified as proprietary or confidential at the time of disclosure, or that by its nature would be understood by a reasonable person to be proprietary or confidential. In such case, such disclosure shall only be with University’s prior written approval and only to the extent necessary to perform services under the Contract. This prohibition also applies to Vendor’s employees, agents and subcontractors and Vendor shall ensure and be responsible for compliance with this provision by its employees, agents and subcontractors. On termination of the Contract, Vendor will return any proprietary and/or confidential information in its

possession (including all confidential information in the possession of its employees, agents and subcontractors) to University.

N. ASSIGNMENT. Neither the Contract nor any duties or obligations therein may be assigned by Vendor without the prior written consent of University.

O. INDEMNIFICATION. Vendor agrees to indemnify, defend and hold University free and harmless from all claims, demands, losses, costs, expenses, judgments, obligations, liabilities, damages, recoveries and deficiencies, including interest, penalties, attorneys' fees and costs, however caused, resulting from, arising out of or in any way connected with Vendor's, its employees', agents' or subcontractors' performance of the Contract or breach of any representation, warranty or provision contained therein.

P. INSURANCE. Vendor, at Vendor's sole cost and expense, will insure its activities and the activities of its employees, agents and any individuals working on behalf of Vendor in connection with the Contract.

Q. UNIVERSITY NAME AND LOGOS. Vendor shall not issue any press release or other public announcement relating to the Contract or the activities contemplated by the Contract or use the University's name, logos, marks or any other trade designations (including, but not limited to, on its website, in printed materials or in any other manner) or any other University intellectual property without the prior written approval of University, which approval may be withheld for any reason.

R. CONTRACT ENFORCEMENT. A party does not waive any right under the Contract by failing to insist on compliance with any of the terms of the Contract or by failing to exercise any right hereunder. Any waivers granted hereunder are effective only if recorded in a writing signed by the party granting such waiver. If any provision of the Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

S. CONFLICT OF INTEREST. Vendor warrants that there exists no actual or potential conflict between Vendor's family, business or financial interests and its services under the Contract. Vendor shall notify University in writing of any change in conditions that might create, give the appearance of or raise questions regarding a possible conflict of interest.

T. DELIVERY OF NOTICES. Service of all notices required or permitted under this Agreement shall be sent to the postal address of Vendor and to Northern Illinois University, Procurement Services, DeKalb, Illinois 60115, or to any other address which a party specifies by giving notice. Notices are effective upon receipt and the sender has the burden of proving receipt.

U. AMENDMENTS. No modification of the Contract is binding unless it is in writing and signed by University and Vendor. Vendor agrees to waive any and all claims for payment(s) in regard to any services performed without prior receipt of an appropriate written amendment to the Contract and issuance of University's purchase order or change order covering such payment(s).

V. GOVERNING LAW. This Contract shall be interpreted and construed according to the laws of the State of Illinois, without regard to its conflict of laws principles.

SECTION II: ON-SITE VENDOR TERMS AND CONDITIONS

A. APPLICABILITY. Section II of these Terms and Conditions shall apply to any Vendor who conducts work or services on University premises or who represents the University at off-campus locations. These terms shall be in addition to the terms listed above in Section I. If any of the terms in this Section II conflict with the terms in Section I, the Section II term(s) shall control, unless there is an agreement modifying these terms and their applicability to Vendor.

B. BACKGROUND CHECKS. Vendor shall ensure that background checks on all of its employees, agents and subcontractors assigned to University pursuant to the Contract are obtained and documented, and shall not assign to University any employees, agents or subcontractors with felony convictions without the prior approval of University. All background checks shall be current within the last twelve (12) months as of the time when each individual is first assigned to the performance of services under the Contract. University has the right to require evidence of compliance with this Section with two (2) business days advance notice. At all times University has the right to request that any employee, agent or subcontractor assigned to University be re-assigned and Vendor shall comply with such request within twenty-four (24) hours.

C. CONDUCT. Vendor and its employees, agents and subcontractors entering upon University's premises shall take all proper and sufficient precautions and safeguards against the occurrence of any accidents, injuries (including death) or damage to any person or property. Vendor, its employees, agents and subcontractors will adhere to all applicable federal, state, local and University laws, rules, regulations, policies and procedures, including, but not limited to: the Smoke Free Campus Act (110 ILCS 64) and the Drug Free Workplace Act (30 ILCS 580); data security rules and procedures; and the requirements of the Health Insurance Portability and Accountability Act ("HIPAA") (PL 104-191).