



Procurement Terms & Conditions

1.0 GENERAL

1.1 Scope. These terms and conditions ("T&Cs") shall be considered incorporated into all offers, purchase orders, or other written agreements, between Wright State University (the "University" or "Purchaser") and any supplier (the "Seller") of goods and services, thereby collectively and entirely constituting the agreement between such parties (the "Agreement").

1.1.1 Interpretation. The Parties shall construe the Agreement's entire language in a manner to give effect to all of its terms to the fullest extent possible. Where there is an irreconcilable conflict between these T&Cs and those found in the offer, purchase order, or other written agreement in which they are incorporated, the terms of such offer, purchase order, or other written agreement shall supersede, unless the Parties agree otherwise.

1.1.2 Limited Scope. These T&Cs only apply to offers, purchase orders, and other written agreements related to the furnishing of goods and services, and shall not apply to other agreements in which the University is a party, including, but not limited to, leases, licenses, contracts to purchase real estate, affiliation agreements, and grants.

1.2 Offers. All offers to purchase made by Purchaser (an "Offer") is subject to immediate acceptance by Seller and, until the Offer is accepted pursuant to its terms, Purchaser reserves the right to cancel.

1.2.1 Shipping. Seller shall not charge for packing, boxing, or cartage, unless agreed upon at the time of purchase in writing, but damage to any material not packed to ensure proper protection will be charged to Seller. Seller shall ensure each package contains a memorandum showing: (1) the shipper's name; (2) contents of package; and (3) the purchase order number.

1.2.2 Failure to Timely Deliver. Purchaser may terminate this Agreement in whole or in part should Seller fail to deliver goods or services within the time specified. Purchaser expressly retains all rights and remedies permitted by law, including, but not limited to, procuring the same goods and services from another supplier and charging Seller any additional expense incurred thereby. No action on the part of Purchaser shall constitute a waiver of any right or remedy.

1.2.3 Uncontrollable Delay. Seller shall not be liable to Purchaser for damages incurred by reason of any failure to deliver or delay in delivery due to any cause beyond Seller's reasonable control and without the fault or negligence of Seller. If Purchaser is to furnish goods or services or complete preparation work prior to Seller's performance, Purchaser shall not be liable to Seller for damages incurred by reason of any failure to deliver or delay in delivery.

due to any causes beyond Purchaser's reasonable control and without fault or negligence of Purchaser.

- 1.3 Acceptance.** Seller may accept an Offer: (1) in a written document signed by Seller; (2) by delivering the subject goods of such Offer; or (3) by commencing performance of the subject services of such Offer. Delivery or performance shall be upon the terms and conditions contained in the Agreement.
- 1.4 Performance.** Notwithstanding Purchaser's acceptance or payment for any delivery of goods and/or services, or any similar act by Purchaser, Seller is deemed to be on notice that Purchaser objects to any additional or different terms and conditions contained in any acknowledgement, invoice, or other communication from Seller, except by written document executed by Purchaser.
- 1.4.1 Right to Inspect Goods. All goods delivered by Seller shall be received subject to Purchaser's inspection and approval. Payment shall not constitute Purchaser's acceptance and is without prejudice to any and all claims that Purchaser may have against Seller. Purchaser's count will be accepted as final and conclusive on all shipments not accompanied by a packing slip. All payments are subject to adjustment for shortage or rejection.
- 1.4.2 Non-Conforming Goods. All incomplete, defective, or non-conforming goods will be rejected and returned, in whole or in part, pursuant to Seller's instruction and at Seller's expense. Such rejected goods shall remain at Seller's risk until returned to Seller at Seller's sole expense. Purchaser may, at its sole discretion, demand that Seller promptly correct, repair, or replace all nonconforming goods and/or services at Seller's sole expense. Seller further agrees that undiscovered delivery of non-conforming goods is not a waiver of Purchaser's right to insist upon further compliance with all specifications. To the extent that the Agreement requires a series of deliveries by Seller, Purchaser reserves the right to cancel the remainder of the Agreement if goods provided are non-conforming or otherwise rejected for cause.
- 1.4.3 Non-Conforming Services. Purchaser may terminate this Agreement in whole or in part should Seller fail to perform the services specified in the Agreement completely or in a workmanlike manner. In the event of a failure to perform, Purchaser, in its sole discretion, may procure the same services from another supplier and hold Seller liable for any additional expense incurred thereby. No action on the part of Purchaser shall constitute a waiver of any right or remedy.
- 1.5 Changes.** Purchaser may at any time and by written notice make changes to the goods and/or services, drawings, specifications, shipping instructions, quantities, delivery schedules, and/or require additional work or direct the omission of work, within the Agreement's general scope. Should any such changes increase or decrease the cost of, or the time required for performance, an equitable adjustment in the price and/or delivery schedule will be negotiated by Purchaser and Seller and such changes shall be memorialized in a written change order executed by the Parties. Notwithstanding the foregoing, Seller has an affirmative obligation to give notice if the changes will decrease costs. Any claims for adjustment by Seller must be made within thirty (30) days from the date the change is ordered or within such additional period of time as may be agreed upon by the parties.

- 1.6 Invoices.** Seller shall send all invoices for payment to Purchaser's Accounts Payable department. Such invoices must reference its purchase order number and match such purchase order on a line-by-line basis to ensure prompt payment. Hard copy invoices shall be mailed to: **Wright State University, c/o Accounts Payable, 3640 Colonel Glenn Hwy, 300 University Hall, Dayton, OH 45435**. Invoices may also be sent electronically, referencing its purchase order number in subject line along with Seller's name and invoice number, to: accounts_payable@wright.edu.
- 1.7 Payment.** Purchaser payment terms are NET30 days, to be calculated from: (1) the date the goods are received or the services are furnished and completed; (2) the date Seller's invoice for goods and/or services is received; or (3) the date of installation or acceptance, whichever is later. Purchaser shall have the option of using any method of payment including credit card, ACH, or check. Purchaser does not accept (pay) any fees for credit card use. Any cash discounts offered will be accepted.
- 1.8 No End User Agreements.** If Seller requires Purchaser or Purchaser's employees to accept a shrink wrap, click-through, end user license, or other similar agreement ("End User Agreement"), the terms of the End User Agreement that conflict or are inconsistent with the terms of the Agreement, applicable law, or Purchaser's policies and procedures will be void.
- 2.0 REPRESENTATIONS AND WARRANTIES**
- 2.1 Generally.** Seller acknowledges that Purchaser is relying on Seller's representations and warranties as essential elements to the Agreement, representing as they do, material inducements, without which Purchaser would not have entered into the Agreement. All warranties stated in this section shall survive inspection, acceptance, passage of title, payment by Purchaser, and termination of the Agreement.
- 2.2 General Product Warranty.** Seller represents and warrants that all goods and any support services provided under the Agreement, and their production and transportation, as applicable, (i) are new and unused (unless otherwise specified or agreed to in writing by Purchaser) and free from defects in material and workmanship; (ii) are of the quality, size, dimension and specifications ordered; (iii) meet the highest performance and manufacturing specifications as described in documents or writings made available by Seller to the public or Purchaser; (iv) comply with all applicable laws, codes, regulations, or ordinances (including any published by any national or statewide association or groups), including but not limited to the Occupational Health and Safety Act, the Federal Transportation Act, and the Fair Labor Standards Act, as well as any law, regulation, or ordinance noted on the face of the Purchase Order; (v) are not restricted in any way by and do not infringe, misappropriate or violate, any patents, copyrights, trade secrets, security interest, lien, or any other encumbrances or rights of third parties; (vi) shall have been properly stored, labeled, handled and shipped by Seller; and (vii) do not constitute unfair competition. Without limiting the foregoing, upon Purchaser's request, Seller will (a) sign all documents pertinent to assign to Purchaser any applicable third-party manufacturer warranties on the goods and (b) deliver to Purchaser a formal release of all liens and encumbrances.
- 2.3 General Services Warranty.** Seller represents and warrants that all services provided shall conform to the level of quality performed by experts regularly rendering this type of service and be accomplished in a professional and workmanlike manner by qualified and efficient personnel

using good, pertinent, scientific and technical procedures, practices and standards. Seller warrants for ninety (90) days after accepted completion of a requested service that its services are fully satisfactory to Purchaser and will repair, replace or redo at no additional cost to Purchaser any unsatisfactory services or, at Purchaser's option, refund the amount of the compensation paid for such portion.

- 2.4 Qualifications.** Seller represents and warrants that it, as well as its employees, representatives, agents, and subcontractors engaged to provide the products or services under the Agreement, has and will maintain all the skills, experience, and qualifications necessary to provide the services contemplated by the Agreement, including any required training, registration, certification, and/or licensure.
- 2.5 No Malware.** Seller represents and warrants that any deliverables resulting from the services do not include, and that any method of transmitting said deliverables to Purchaser will not introduce, any program, routine, subroutine, or data (including malicious software or "malware," viruses, worms, and Trojan Horses) that are designed to disrupt the proper operation of the deliverables or any other software or system used by Purchaser, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action, will cause the deliverables resulting from the services or any system or software used in connection therewith to be destroyed, damaged, or rendered inoperable.
- 2.6 No Conflict of Interest.** Seller represents, warrants, and certifies that it and its employees engaged in the administration or performance of the Agreement are knowledgeable of and understand the Ohio Ethics and Conflicts of Interest laws. Seller further represents, warrants, and certifies that neither Seller nor any of its employees will do any act that is inconsistent with such laws. Seller hereby certifies that they are in full compliance with Divisions (I) and (J) of Ohio Revised Code Section 3517.13. In addition, as applicable, neither Seller nor any employee, agent, or other person acting on its behalf will: (i) undertake, cause, or permit any act that would violate any applicable anti-corruption law, including, but not limited to, the U.S. Foreign Corrupt Practices Act, or (ii) make, cause, or permit any offer, promise, or payment of money or any other thing of value to any third party, directly or indirectly, to improperly influence the actions of any person, or to obtain any improper advantage in favor of Purchaser in connection with any of the goods and/or services.
- 2.7 Other Representations.** Seller represents and warrants that: (i) it is a legally organized entity in good standing under the laws of the state of its organization and, where required, in good standing under the laws of the State of Ohio and has full power and authority to enter into and fulfill all the terms and conditions of the Agreement; (ii) the officers/representatives of Seller have full power and authority to execute the Agreement on behalf of Seller and bind Seller to all the terms and conditions; (iii) it has and will timely obtain, at its expense, all permits, licenses, and certification required under applicable federal, state, and/or local laws and regulations necessary for the performance of the Agreement; and (iv) it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to perform all its duties and obligations and to satisfy all the terms and conditions of this Agreement.

- 2.7.1 Boycott Restrictions. Pursuant to R.C. 9.76(B), Seller represents and warrants that it is not boycotting any jurisdiction, including Israel, with which the state of Ohio can enjoy open trade, and will not institute any such boycott during the contract period.
- 2.7.2 Public Contract Eligibility. Seller warrants that it (and any of its employees, contractors, or agents) is eligible to participate in federal or state public procurement contracts, or is not otherwise excluded from participation in federal or state health care programs, has not been convicted of a criminal offense related to health care, is not included on the List of Excluded Individuals/Entities, System for Award Management, Ohio Medicaid Provider Exclusion Suspension, Findings for Recovery (Ohio Revised Code 9.24), or Ohio Department of Developmental Disabilities Abuser database registries or lists. Seller further agrees that if this warranty is deemed to be false, the Agreement shall be void ab initio as between the parties and Seller shall immediately repay to Purchaser any funds paid under the Agreement, or an action for recovery may be immediately commenced by Purchaser for the recovery of said funds.

3.0 SELLER'S ADDITIONAL DUTIES AND OBLIGATIONS.

- 3.1 Indemnification. Seller shall indemnify and hold harmless the State of Ohio and Wright State University, together with their respective trustees, elected and appointed officers and officials, agents, representatives, employees, affiliates, permitted successors and assigns, insurers, attorneys, and other related parties (collectively the "Indemnified Parties") from any and all demands, causes of action, losses, liabilities, judgments, damages, claims (including but not limited to claims of negligence), costs and expenses (including but not limited to attorney's fees and costs related to personal information data breaches), arising from, caused by, or related to: (1) the injury or death of any person (including, but not limited to, employees and agents of Seller in the performance of their duties or otherwise); (2) damage to property (including property of Purchaser or other persons), which arise out of or are incident to the goods and services to be provided hereunder; (3) all claims and liabilities for actual or alleged infringements of any patent, trademark, or similar rights, which arise out of or are incident to the goods and services to be provided hereunder; (4) allegations that Purchaser's use of the goods and/or services provided under the Agreement are inconsistent with Seller's representations and warranties in accordance with Section 9; (5) any negligent or willful act or omission on the part of Seller or its employees, representatives, agents, and subcontractors under the Agreement; and/or (6) Seller's breach of the Agreement.
- 3.1.1 Exception for Worker's Compensation. Nothing herein shall require indemnification as to any claims against Purchaser arising from or under the Ohio Worker's Compensation law, unless the claim arises out of services performed by Seller's employees on Purchaser's property.
- 3.1.2 Defense of Suit. Seller's defense of any claim shall be subject to the Ohio Attorney General's right to appoint counsel and approve settlements. If any claim that arises from Seller's breach of a non-infringement representation and warranty has occurred, or is likely to occur, Seller may, at Purchaser's option, procure for Purchaser the right to continue using the goods or services, or replace or modify the goods or services so that they become non-infringing

(without any material degradation in performance, quality, functionality, or additional cost to Purchaser).

- 3.2 Limitation of Liability.** The Purchaser's liability for damages, whether in contract or in tort, will not exceed the total amount of compensation payable to Seller under this Agreement. In no event will the purchaser be liable for any indirect or consequential damages, including loss of profits, even if the purchaser is advised, knew or should have known of the possibility of such damages. Notwithstanding any language to the contrary, the seller will be liable for any personal injury or damage to the purchaser in performing the services, including damage to real property or tangible personal property, caused by its fault or negligence.
- 3.3 Insurance.** During the term of the Agreement, Seller shall procure and maintain at least minimum insurance described in **ATTACHMENT A** until their obligations have been discharged, including any warranty periods under this contract are satisfied. The minimum insurance requirements in no way limit the indemnity covenants contained in this contract nor does the Purchaser warrant that the minimum insurance requirements are sufficient to protect the Seller from liabilities that may arise out of the work done under the contract.
- 3.3.1 **Waiver of Insurance Coverage.** Seller may obtain a waiver of some or all of its insurance obligations by requesting such waiver from Purchaser. Such request shall be in writing, specify the grounds for such waiver, and be sent to contracts@wright.edu. Purchaser shall have sole discretion as to whether to waive some or all of such insurance obligations.
- 3.4 Data Privacy.** In the event the goods and/or services to be furnished pursuant to the Agreement requires the transmission of data between the Parties, whether such data is in physical or electronic form, Seller shall follow the policies, procedures, and prohibitions described in **ATTACHMENT B**.
- 3.5 Expenses.** Seller shall not charge Purchaser for any expenses beyond what is provided in writing unless authorized by this Agreement.
- 3.5.1 **Travel.** Seller shall not charge Purchaser for any travel expenses, meals, and lodging unless authorized and paid in accordance with Purchaser's travel policy (Policy 9510) as may be amended from time to time, and only to the extent such expenses are supported by written, itemized, and paid invoices submitted by Seller to Purchaser. Any expenses in excess of the amounts prescribed shall be borne by Seller.
- 3.5.2 **Taxes.** Purchaser is an instrumentality of the state of Ohio, and as such, is exempt from all Federal excise taxes and State of Ohio sales and use taxes, neither of which shall be charged to Purchaser in connection with any goods or services procured subject to the Agreement.
- 3.5.3 **Transportation and Delivery of Goods.** While on Purchaser's campus, Seller shall comply with all of Purchaser's parking policies (Policy 7410) and obtain all necessary parking permits while performing any work on Purchaser's premises. If needed, Seller should contact the Department of Public Safety, Parking Services at 937-775-2111 or email: parking@wright.edu for parking procedures.

3.6 Records; Audit. Seller is responsible for keeping accurate and reasonable records related to its performance and obligations under the Agreement. In particular, records will be kept documenting any price, cost, or budget computations required under the Agreement. Seller agrees that Purchaser or its duly authorized representative has the right to audit any of Seller's pertinent books, documents, papers, and records related to transactions and/or performance of the terms and conditions of the Agreement, at the Seller's location or through a desk audit not at a Seller's location, and Seller shall provide the Purchaser or its authorized representatives with access to all relevant records, documents, and facilities necessary for the audit. The right to audit shall include periodic examinations of records throughout the term of the Agreement and for a period of three (3) years after its termination. The right to audit shall also apply to agents and subcontractors hired by Seller for the purpose of fulfilling the Agreement and the right to audit shall be explicitly included in any subcontracts or agreements formed between the Seller and any subcontractors or agents. In the event that audits discover substantive findings related to performance and obligations, fraud, misrepresentation or nonperformance, Seller agrees to work with Purchaser to rectify the deficiencies, which may include the Purchaser's recoupment of inappropriate costs identified in the audit and/or the cost of the audit from Seller.

3.6.1 Federal Requirements. In the event it is determined that Section 952 of the Omnibus Reconciliation Act of 1980 (P.L. 96-499) and regulations adopted pursuant thereto apply to this Agreement, the parties agree, for a period of four years after performance hereby, to make available to the Secretary of Health and Human Services or the Comptroller General of the United States, or any of their duly authorized representatives, upon written request therefore, this Agreement and its or their books and records necessary to certify the nature and extent of the costs thereof. If any portion of this Agreement is to be performed through a subcontract with a related organization at a cost in excess of Ten Thousand Dollars (\$10,000.00) over a twelve (12) month period, such subcontract will contain this requirement.

3.7 Confidentiality. As between Seller and Purchaser, all Purchaser confidential information (including, but not limited to, the personal information of its faculty, staff, and students) and intellectual property (including, but not limited to, Purchaser's name, marks, and logos) is the property of Purchaser, and no license or other rights are granted or implied hereby. Except as otherwise noted in this Agreement, Seller agrees that it will keep confidential all information regarding the features of any equipment, tools, gauges, patterns, designs, drawings, engineering data, or other technical or proprietary information furnished by Purchaser, and will use such items only in the production of goods and/or services under the Agreement. Upon the completion or termination of the Agreement, Seller shall immediately return all confidential information to Purchaser or shall make other disposition of the confidential information as directed by Purchaser. Seller's obligations with respect to Purchaser's confidential information under this Section will remain in effect for the term of the Agreement and for five (5) years after the termination of the Agreement.

3.7.1 Intellectual Property. All deliverables, materials, inventions, and discoveries that are made, conceived, discovered, developed, created, or otherwise result from the Agreement ("Work Product") will be owned by and are the exclusive property of Purchaser. Purchaser and Seller intend that such Work Product be deemed "work made for hire." If, for any reason, any Work Product is not deemed "work made for hire," Seller hereby irrevocably assigns to Purchaser all rights, title, and interest in, and to any and all of the Work Product whether arising from

copyright, patent, trademark, know-how, trade secret, or any other state or federal intellectual property law or doctrine. Seller will execute such further documents and instruments as Purchaser may request in order to fully vest such rights, title and interest in Purchaser. Seller hereby waives any and all rights in and relating to the Work Product, including without limitation, any and all rights arising under 17 U.S.C. 106A, or any other rights of identification of authorship, or rights of approval, restriction, or limitation on use, or subsequent modifications.

- 3.7.2 Use of Brands, Logos, and Marks. Seller shall not publicize or advertise the fact that it has contracted with Purchaser for goods and/or services and shall not use Purchaser's name, trademarks (including logos), or other identifying indicia, without the prior written consent of Purchaser.
- 3.7.3 Exception for Public Records. Seller acknowledges that Purchaser has a statutory obligation under Ohio Revised Code Section 149.43 to provide all public records upon request. This Agreement, proposals, quotes, bid process results, and other records will be a matter of public record.

3.8 Legal Compliance with Laws. Seller shall fully comply with any and all applicable federal, state, and local laws, executive orders, rules, regulations, and ordinances

- 3.8.1 Purchaser's Policies. Seller shall fully comply with any and all applicable policies and procedures of Purchaser, which may be found at <https://policy.wright.edu/>, with respect to the provision of goods and services under the Agreement and to contractors supplying State of Ohio instrumentalities.
- 3.8.2 Prevailing Wages. Where applicable, the Supplier shall comply with the prevailing wage requirements described under Ohio Revised Code Chapter 4115.
- 3.8.3 Background Check Policy. In the event Seller is furnishing services on-site, Seller must obtain background checks on all of its on-site agents, employees, and/or subcontractors consistent with, and pursuant to, Purchaser's Background Check Policy (Policy 8130), unless otherwise agreed to in writing between the Parties. For questions or more information contact Human Resources at human_resources@wright.edu or (937) 775-2120. Background check documentation will be provided to Purchaser upon request pursuant to section 3.6 of this agreement.
- 3.8.4 Non-Discrimination. If applicable, Executive Order 11246, 29 C.F.R. Part 471, Appendix A to Subpart A, and 41 C.F.R. Parts 60-1.4, 60-1.7, 60-4.3 are incorporated. If applicable, Seller and subcontractor shall abide by the requirements of 41 C.F.R. 60-300.5(a) and 60-741.5(a). If applicable, these regulations prohibit discrimination against qualified protected veterans and against qualified individuals on the basis of disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.
- 3.8.5 Americans with Disabilities Act and Rehabilitation Act. To the extent applicable, Seller agrees to comply with all applicable provisions of the Americans with Disabilities Act, the

Rehabilitation Act of 1973, and all applicable federal regulations, as amended from time to time ("ADA Laws"). All electronic and information technology and products and services to be used by Purchaser's faculty/staff, students, program participants, or other Purchaser constituencies must be compliant with ADA Laws. If Seller is providing or selling software to Purchaser, the following applies:

- Seller acknowledges and warrants that software conforms and shall continue to conform during the term of the Agreement to the applicable W3C Web Content Accessibility Guidelines, ("WCAG"). Seller will make commercially reasonable efforts to ensure that the software includes assistive technologies and features and will include accessibility features in any software support documentation and instructions for using the software with assistive technologies.
- If during the term of the Agreement, Seller fails to maintain compliance with WCAG, or Purchaser otherwise identifies an issue related to accessibility of the software (the "Accessibility Issue") that renders the application inaccessible, then Purchaser shall notify Seller of the Accessibility Issue. Within thirty (30) days of Purchaser's receipt of a non-compliance notice ("Non-compliance Notice"), Seller and Purchaser shall meet and mutually agree upon an appropriate timeline for resolution of the Accessibility Issue(s) ("Initial Meeting").
- In the event Seller fails to: (i) acknowledge receipt of the Non-compliance Notice within thirty (30) days of receipt of the Non-compliance Notice; or (ii) establish a mutually agreed upon timeline for resolution within thirty (30) days following the Initial Meeting; or (iii) materially resolve the Accessibility Issue(s) within the agreed-upon timeline, then Seller will provide a credit against Purchaser's next invoice equal to 1/365 of the annual fees for the impacted software per day of delay, for up to a maximum of thirty (30) days, after which Purchaser may terminate the Agreement and Seller shall refund to Purchaser a pro-rata share of any pre-paid fees. For clarity, credits will not exceed 30/365 of such annual fees per notice.
- Seller agrees to indemnify and hold harmless the Indemnified Parties from any claims arising out of its failure to comply with the required WCAG. Seller's defense of any claim shall be subject to the Ohio Attorney General's right to appoint counsel and approve settlements.
- Seller's failure to comply with this section shall constitute a material breach of the Agreement and shall be grounds for termination of the Agreement by Purchaser.

4.0 TERMINATION.

- 4.1 Generally.** Except as otherwise provided in Section 1 above, the Agreement may be terminated at any time without cause by Purchaser upon thirty (30) days' prior written notice to Seller. The Agreement also may be terminated immediately by Purchaser for breach by Seller of the Agreement, provided that Purchaser has provided Seller with notice of such breach and Seller has failed to cure within ten (10) days of receipt of such notice. In the event of such a default,

Purchaser may procure the goods and services from other sources and Seller will be liable to Purchaser for any excess costs Purchaser incurs.

4.1.1 Automatic Termination. Purchaser may terminate the Agreement immediately or at any time if: (1) Seller files a petition in bankruptcy, or is adjudicated bankrupt; (2) a petition in bankruptcy is filed against Seller and not discharged within thirty (30) days; (3) Seller becomes insolvent or makes an assignment for the benefit of its creditors or an arrangement pursuant to any bankruptcy law; (4) a receiver is appointed for Seller or its business; (5) Seller ceases to conduct its normal and customary business and operations; or (6) Seller suffers a material adverse change in financial condition.

4.1.2 Non-Appropriation Contingency. Purchaser may terminate this Agreement without further liability to the Seller if Purchaser determines that the General Assembly has failed to appropriate sufficient funds for the Purchaser's obligations, either generally or with specific reference to this Agreement. To terminate for non-appropriation of funds, Purchaser must serve a written notice of termination stating: (i) that the termination is for non-appropriation of funds, and (ii) specifying the effective date of the termination, which shall be within the Term but otherwise in Purchaser's sole discretion.

4.2 Duties Upon Termination.

4.2.1 Remaining Payments and Refunds. Upon termination, Seller shall refund to Purchaser all prepaid amounts for goods or services not delivered or performed. If the Agreement is terminated pursuant to this section, subject to the provision of any transition services, Purchaser will pay Seller, as full compensation under the Agreement the portion of goods or services delivered or performed and accepted prior to the effective date of termination based on the unit prices in the Agreement, or, if no unit prices are provided, the pro rata amount of the total order price based on the amount delivered or performed. In no event will compensation paid previously under the Agreement together with compensation paid under this Section exceed the total Agreement price.

4.2.2 Return of Confidential Information and Data. The Parties shall return to one another all confidential information and/or intellectual property in their possession within ten (10) business days of this Agreement's termination.

5.0 OTHER PROVISIONS.

5.1 Independent Contractor. Seller is an independent contractor, and neither Seller nor Seller's employees, agents, or other representatives shall be considered Purchaser's employees, agents, or partners. Seller is retained by Purchaser only for those purposes and to the extent set forth in the Agreement. Seller does not have authority to sign anything that obligates the Purchaser, including agreements and notes, or to make purchases or dispose of property for or on behalf of the Purchaser except as expressly provided in this Agreement. All individuals employed by Seller who provide personal services to Purchaser are not public employees for purposes of Chapter 145 of the Ohio Revised Code, as amended. Seller accepts full responsibility for payment of taxes including without limitation, unemployment compensation insurance premiums, all income tax

deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by the Seller in performance of Services authorized by this Agreement.

- 5.2 No Third-Party Beneficiaries.** Purchaser and Seller are the only parties to the Agreement and are the only parties entitled to enforce its terms. Nothing in the Agreement gives, is intended to give, or will be construed to give any benefit or right, whether directly, indirectly or otherwise, to third persons, unless such third persons are individually identified by name and expressly described in the Agreement as intended beneficiaries.
- 5.3 Notices.** All notices under the Agreement shall be sent to the respective addresses on the face page of the purchase order by certified mail with return receipt requested or by personal delivery and will be deemed effective upon receipt. In the event an addressee refuses to accept delivery, however, then notice shall be deemed to have been served on the date of said refusal of delivery. Postage, delivery charges and other charges shall be paid by the sender. A party may reasonably amend its notice address(es) upon written notice to the other party. All such notices shall also be sent via electronic mail to purchasing@wright.edu.
- 5.4 Assignments; Subcontracts.** Seller may not assign, subcontract or transfer any of its interests in the Agreement, nor any money due or to become due without the prior written consent of Purchaser, which consent may be withheld by Purchaser in its sole discretion. Purchaser's consent to any assignment or subcontract will not relieve Seller of any of its duties or obligations under the Agreement. The Agreement will be binding upon and will inure to the benefit of the parties and Seller's authorized successors and assignees. Any assignment made without such consent shall be deemed void.
- 5.5 Governing Law.** This Agreement shall be governed and construed under the substantive and procedural laws of the State of Ohio and all actions to interpret or under the same shall be brought exclusively within an Ohio state court of competent jurisdiction according to Ohio Law. The Seller irrevocably consents and stipulates to the exclusive subject matter and personal jurisdiction of the said courts to hear and adjudicate any and all disputes between the Seller and the Purchaser. In no event will any part of the Agreement be construed as a waiver by Purchaser of its sovereign and governmental immunities.
- 5.6 Prohibited Provisions.** Seller hereby acknowledges that Purchaser, as a public university, is subject to the laws of the State of Ohio, including without limitation the Ohio Constitution and applicable sections of the Ohio Revised Code. Accordingly, the Purchaser is prohibited from entering into any agreement that contains the provisions listed in Ohio Revised Code 9.27(B) (the "Prohibited Provisions"). To the extent that this Agreement or Seller's proposal, scope of work, offer, acceptance, or any other document(s) attached hereto or incorporated by reference, contains one or more Prohibited Provisions, then pursuant to Ohio R.C. 9.27(C) and (D), Seller hereby agrees that all Prohibited Provisions contained in the Agreement or such documents provided by Seller are void ab initio, are hereby deemed deleted in their entirety, and shall not be binding on Purchaser and Seller hereby represents, warrants, covenants, and/or agrees that Seller will not attempt to enforce any of the Prohibited Provisions against Purchaser.
- 5.7 Force Majeure.** Neither Purchaser nor Seller shall be liable or responsible for any delay or failure in performance resulting from any cause beyond their control, including, but not limited to war,

strikes, pandemics, epidemics, quarantine restrictions, freight embargoes, blockades, governmental or quasigovernmental order, civil disturbances, and/or acts of nature. When Seller has knowledge of any actual or potential force majeure or other conditions which will delay or threatens to delay timely performance of the Agreement, Seller shall immediately give notice thereof, including all relevant information with respect to what steps Seller is taking to complete delivery of the goods and/or services to Purchaser. In the event that Seller's delay remains uncured for a period of ten (10) days following written notice given by it under this Section, Purchaser may thereafter terminate the Agreement upon five (5) days' written notice.

- 5.8** **Waiver.** Failure of Purchaser to act immediately in response to a breach of the Agreement by Seller shall not constitute a waiver of breach. Waiver of Purchaser of any default by Seller hereunder shall not be deemed a waiver of any subsequent default by Seller.
- 5.9** **Survival.** All provisions of the Agreement that anticipate performance after the termination of the Agreement, and all provisions necessary or appropriate to interpret and enforce such provisions, shall survive termination of the Agreement.
- 5.10** **Severability.** If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.
- 5.11** **Time is of the Essence.** Time for delivery of goods or performance of services under the Agreement is of the essence. Failure of Seller to meet delivery schedules or deliver within a reasonable time, as interpreted by Purchaser alone, shall entitle Purchaser to seek all remedies available to it at law or in equity. Seller agrees to reimburse Purchaser for any expenses incurred in enforcing Purchaser's rights.

Attachment A
Procurement Terms and Conditions

Seller Insurance Requirements

Seller shall provide coverage with limits not less than those stated below. This minimum may be met by a combination of primary and/or excess/umbrella coverage or equivalent. Insurance is to be placed with duly licensed or approved non-admitted insurers in the State of Ohio.

A.1 Generally. All insurance policies must be endorsed to apply on a primary basis, non-contributory with any other insurance coverages and/or self-insurance carried by the Purchaser. If the Seller has higher insurance limits than required, the Purchaser requires and will be entitled to coverage for the higher limits maintained by Seller.

A.1.1 University as Named Insured. With the exception of Worker's Compensation and Employer's Liability Coverage policies should be endorsed to include "Wright State University and its governing board, officers, agents, and employees" as additional insured with respect to liability arising out of the activities performed by or on behalf of the Seller.

A.1.2 Waiver of Subrogation. All insurance policies procured pursuant to these requirements shall contain a waiver of subrogation in favor of Wright State University and its governing board, officers, agents, and employees.

A.1.3 Proof of Coverage. Seller shall provide Purchaser with certificates of insurance in ACORD form or equivalent and required policy endorsements. These documents are to be sent to the Purchaser's Procurement and Contract Services office at 3640 Colonel Glenn Hwy, 300 University Hall Dayton, Ohio 45435 or coi-procurement@wright.edu. Each certificate required by this contract must be in effect at or prior to commencement of work under this contract and remain in effect for the duration of the contract.

A.1.4 Notification of Cancellations and Changes. No cancellation or material change to Seller's insurance coverage may be made without prior written notice to the Purchaser. Such notice shall be sent directly to the Purchaser's Risk Management department at: 3640 Colonel Glenn Hwy, 240 University Hall, Dayton, Ohio 45435.

A.1.5 Subcontractor Insurance. Subcontractors are subject to the same minimum insurance requirements and may be insured under the Seller's policies or Seller shall provide the Purchaser with separate certificates and endorsements for each subcontractor.

A.1.6 Failure to Maintain Coverage. Failure to maintain the insurance policies as required by this contract, or to provide evidence of renewal, is a material breach of contract. Seller acknowledges and affirms that it will be solely responsible for losses and damages which occur while its coverage is no longer in effect.

A.1.7 Claims Made Policies. If any of the required policies provide claims-made coverage: (i) The retroactive date must be shown and must be before the date of the Contract or the beginning of contract work; (ii) Insurance must be maintained and evidence of insurance must be

provided for at least 3 years after completion of the contract work; and (iii) If coverage is canceled or non-renewed and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase “extended reporting” coverage for a minimum of 3 years after the completion of the work.

A.2 Minimum Coverage for Goods and Services. Sellers furnishing goods and/or services to Purchaser must maintain the following coverages:

- **Commercial General Liability.** Policy shall include bodily injury, property damage, personal injury, contractual liability, products/completed operations, fire legal liability, medical payments coverage, and sexual molestation/abuse if Seller is interacting with minors.

Each Occurrence:	\$1,000,000
General Aggregate	\$2,000,000

- **Worker’s Compensation/Employer’s Liability.** Worker’s compensation for losses arising from work performed by or on behalf of the Service Provider.

State Fund/Self-Insurance	Statutory
Proof of Employer’s Liability	\$1,000,000

- **Business Automobile.** Bodily injury and property damage for any owned, leased, hired and non-owned vehicles used in the performance of the contract. Service Provider transporting Purchaser property/people or the use of a vehicle during performance of the Contract.

Combined Single Limit	\$1,000,000
-----------------------	-------------

A.3 Minimum Coverage for Professional Services. Sellers furnishing services which require licensed and certified professionals must maintain the same coverages as Section A.2 above, and additionally carry the following:

- **Professional Liability (Errors & Omissions).** Policy shall include bodily injury, property damage, personal injury, contractual liability, and sexual molestation/abuse if Seller is interacting with others. Coverage shall be maintained for a period of three years after coverage term.

Professional Service – Architects, Engineers, Accountants, Consultants, etc.

Each Occurrence	\$1,000,000
General Aggregate	\$3,000,000

Medical Service – Medical Practitioners, Nurses, Counselors, Allied Health, etc.

Each Occurrence	\$2,000,000
General Aggregate	\$6,000,000

A.4 Minimum Coverage for Ground Transportation. Sellers furnishing ground transportation services to Purchaser must maintain the following coverages:

- **Commercial General Liability.** Policy shall include bodily injury, property damage, personal injury, contractual liability, products/completed operations, fire legal liability, medical payments coverage, and sexual molestation/ abuse if Seller is interacting with minors.

Each Occurrence	\$5,000,000
General Aggregate	\$5,000,000

- **Worker's Compensation/Employer's Liability.** Worker's compensation for losses arising from work performed by or on behalf of the Service Provider.

State Fund or Self-Insurance	Statutory
General Aggregate	\$1,000,000

- **Business Automobile.** Seller's using busses or road coaches to transport Purchaser property, people, or use of vehicle is integral to performance of the contract, combined single limit per accident:

15 or more passenger capacity	\$10,000,000
Less than 15 passenger capacity	\$5,000,000

A.5 Minimum Coverage for Chartered Aircraft. Sellers furnishing chartered aircraft services to Purchaser must maintain the following coverages:

- **Comprehensive Aircraft Liability.** Policy shall include bodily injury, bodily injury, and property damage to third parties, passenger liability, contractual liability, and completed operations liability. Such coverage shall provide:

No less than \$7,500,000 times the number of seats on the aircraft
 No less than \$50,000,000 per occurrence
 No sub-limits for passenger bodily injury

Certificates provided to Purchaser must specifically state that charter use is permitted by carrier. Certificate shall evidence the policy coverage territory. Coverage must also include war, hijacking, and other peril insurance. Any sub-limits should be specifically outlined.

- **Worker's Compensation/Employer's Liability.** Worker's compensation for losses arising from work performed by or on behalf of the Service Provider.

State Fund or Self-Insurance	Statutory
General Aggregate	\$1,000,000

The charter operator's insurer agrees that the insurance afforded to Purchaser shall not be invalidated by an act or neglect by the operator whether or not such act or neglect is a breach or violation of any warranties, declarations or conditions of the charter operator's policy. Purchaser must not have caused or knowingly condoned the said act or neglect.

A.6 Other Minimum Coverages. Sellers acknowledge that their services may pose different risks, for which they shall be required to provide the following additional coverages, based on described circumstances:

- **Liquor Liability.** If Seller's services include the distributing, selling, or serving alcoholic beverages, Seller shall obtain the following additional coverage in its Commercial General Liability policy or by way of separate policy.

Each Occurrence and Aggregate \$1,000,000

- **Crime Coverage.** If Seller, during its ordinary course of furnishing services, has access to cash or payments, networks, PCI, or outsourced services such as custodial, building management, dining, etc., Seller shall obtain the following additional coverage in its Commercial General Liability policy or by way of separate policy.

Each Occurrence and Aggregate \$1,000,000 **OR** fidelity bond of 50% of Contract value or \$100,000, whichever is greater.

Such coverage shall include Contractor's employees and shall not require arrest or conviction to trigger coverage.

- **Cyber Liability.** If Seller, during its ordinary course of furnishing services, has access to credit card information, student or employee records, health records, or any other Personally Identifiable or Protected Health Information, Seller shall obtain the following additional coverage in its Commercial General Liability policy or by way of separate policy.

Each Occurrence and Aggregate \$1,000,000 minimum; \$5,000,000 preferred.

Such coverage shall include all industry-standard services, including, but not limited to, breach response services and identity-theft mitigation services.

- **Pollution Legal Liability.** If Seller's services involve potential pollution risk to the environment or losses caused by pollution conditions which may arise from Seller's operations (such as demolition, asbestos abatement, involves hazardous materials, etc.), Seller shall obtain the following additional coverage in its Commercial General Liability policy or by way of separate policy.

Each Occurrence \$1,000,000
General Aggregate \$3,000,000

Attachment B
Procurement Terms and Conditions

Data Privacy Requirements

B.1 Definitions.

- The term “**ISP**” or “**Information Security Program**” means a system of policies, procedures, technical and organizational safeguards, and training designed to protect Personal Information which a party may obtain during this Agreement’s performance.
- The term “**Personal Information**” shall mean any personally-identifiable information, including, but not limited to student records, protected health information, or individual financial information, which may be subject to federal, state, or industry laws, regulations, and rules restricting the use and disclosure of such information, including, but not limited to: the Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g); and the privacy and information security aspects of the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act (45 C.F.R. Part 160 and Subparts A, C, and E of Part 164); or the Payment Card Industry Data Security Standards.
- The term “**Purchaser’s Data**” shall mean and include all information Purchaser discloses to Seller during the course of this Agreement’s performance, including Personal Information.

B.2 Prohibition of Unauthorized Use of Data. To the extent Seller’s performance under the Agreement involves Personal Information, Seller agrees to comply with all applicable federal and state laws, regulations, rules, policies or industry standards restricting the access, use, and disclosure of such Personal Information.

B.3 Security Standards. Seller represents, warrants and covenants, as applicable, that Seller will protect Purchaser’s Data by implementing an industry security and privacy standard including, at minimum, the following measures:

- B.3.1 Network Security. Seller shall maintain network security that includes network firewall provisioning, intrusion detection, network device logging and alerting, and vulnerability scans on externally facing systems in accordance with industry standards.
- B.3.2 Data Security. Seller shall comply with applicable standards governing the patch management criticality rankings and patching time frame requirements for its systems and applications including, but not limited to, switches, routers, appliances, servers, workstation PC’s, commercial software, and open-source software.
- B.3.3 Data Transmission. Seller shall implement and maintain secure transmission protocols such as SFTP, SSH, TLS/SSL, and HTTPS when transmitting sensitive data.
- B.3.4 Identity and Access Management. Seller shall implement and maintain access standards designed to authenticate users, permit authorized access to Purchaser’s Data, maintain segregation of duties, and revoke access as part of employee termination or transition.

- B.3.5 Data Storage. Seller shall maintain appropriate policies, procedures, and controls reasonably designed to secure Purchaser's Data stored by Seller, its employees, and its suppliers. Seller or its employee mobile devices, portable or laptop computing devices, or portable media that stores Purchaser's Data shall use appropriate encryption designed to reduce the risk of compromise or misuse. Additionally, the access to Purchaser's Data through such devices must be approved by Purchaser.
- B.3.6 Return or Destruction of Data. Seller shall maintain a record retention policy that determines how records are retained, managed, stored and, where appropriate, destroyed. Since certain information cannot be erased or deleted from electronic systems, Seller maintains the confidentiality of all retained information until such time as the information is destroyed. Where appropriate, Seller will maintain a record of destruction, shared with Purchaser, for all types of Purchaser's Data in its possession.
- B.3.7 Resiliency. Seller maintains appropriate and effective business continuity and disaster recovery plans to ensure resiliency of Purchaser's Data and business operations.
- B.3.8 U.S. Storage. All Purchaser's Data shall be stored in the United States.
- B.3.9 Security Program. Seller shall maintain an ISP made up of policies, procedures, technical and organizational safeguards, and training designed to protect Purchaser's Data against unauthorized loss, destruction, alteration, access, or disclosure. Seller shall not use or disclose Purchaser's Data received from or on behalf of Purchaser except as appropriate to perform the services under the Agreement; as required by law, order, regulation, rule, industry standard, subpoena, or other legal or administrative process; or as otherwise authorized in writing by Purchaser. Seller agrees to require this same compliance in any of its subcontractor or agency agreements providing services under the Agreement. Any action taken or omission made by Seller's subcontractor or agent in connection with the Agreement will be deemed to have been taken by Seller and Seller shall be responsible to Purchaser for all such actions or omissions. Purchaser reserves the right to perform audits of Seller's ISP as necessary. Purchaser will provide its request in writing and will work with Seller to schedule a time to conduct the audit.
- B.3.10 Privacy. Seller shall maintain a privacy policy, which includes, at minimum, processes for accessing, correcting, and requesting deletion of Personal Information. If required by law, regulation, rules or industry standards to fulfill the terms of the Agreement, Seller will implement processes to obtain individual's consent and requests to opt out. Seller may not transfer to third parties (unless pursuant to the requirements of the Agreement, and third party uses the Purchaser's Data only for the requirements of the Agreement) or sell Personal Information or re-identify Personal Information that has been de-identified.

B.4 Notification of Network or Data Breach. Seller shall immediately notify Purchaser in writing about any network breach and/or use or disclosure of Purchaser's Data not authorized by the Agreement, including any reasonable belief that unauthorized access to or acquisition of the Purchaser's Data has occurred. Seller shall make a report to Purchaser at security@wright.edu not more than two (2) business days after Seller reasonably believes there has been such

unauthorized use or disclosure. Seller's report shall identify: (i) the nature of the unauthorized use or disclosure; (ii) the network element(s) and/or Purchaser's Data used or disclosed; (iii) who made the unauthorized use or received the unauthorized disclosure; (iv) what Seller has done, or shall do, to mitigate any negative effect of the unauthorized disclosure; and (v) what corrective action Seller has taken, or shall take, to prevent future unauthorized use or disclosure. Seller shall comply with all applicable laws, regulations, rules, and industry standards that require the notification of individuals in the event of unauthorized release of personally identifiable information and any other event requiring such notification ("Notification Event"). Purchaser may, in its sole discretion, choose to provide notice to any or all parties affected by a network or data breach, but Seller shall reimburse Purchaser for the cost of providing such notification. Seller further agrees to provide, or to reimburse Purchaser for its costs in providing, any credit monitoring or similar services that are necessary as a result of Seller's network or data breach.

B.5 Payment Card Security. If, in the course of its engagement with Purchaser, Seller has access to or will collect, access, use, store, process, dispose of, disclose, or otherwise influence the security of payment cardholder data, Seller represents and warrants that it is responsible for: (i) the security of cardholder data that it possesses or otherwise stores, processes or transmits, or to the extent that it could impact the security of Seller's cardholder data environment; (ii) providing all cardholder data payment processing services for every merchant account for which it is processing such payments; and (iii) managing and maintaining all Payment Card Industry Data Security Standard requirements as then in effect (PCI DSS). In addition, Seller has the appropriate safeguarding measures to protect cardholder data, and, at a minimum, shall, at its own cost and expense, fully comply with the Payment Card Industry Data Security Standard.

B.5.1 PCI Third Party Service Provider. If Seller provides services to Purchaser that are directly involved in transmitting, processing, or storing cardholder data on behalf of Purchaser (as the merchant) or that control or could impact the security of such cardholder data, Seller has entered into a separate PCI Third Party Service Provider Agreement.

B.6 Business Continuity System. Seller shall maintain appropriate business continuity procedures and systems to ensure security of cardholder data in the event of a disruption, disaster or failure of its primary data systems.

B.7 Unauthorized Disclosure. In the event of any suspected, alleged or confirmed loss, disclosure, theft or compromise of cardholder data or card transaction information relating to cardholder data services (a "Compromised Data Event"), Seller shall immediately notify (i) the Office of the Chief Information Security Officer by leaving a voicemail at 937-775-4827 and sending an email to security@wright.edu, (ii) the Office of Procurement Card Services by sending an email to procard@wright.edu, and (iii) in the manner required in the PCI DSS requirements and applicable law. Upon Seller's suspected or actual discovery of a Compromised Data Event, Seller shall not alter or destroy any related records and will maintain complete and accurate documentation regarding any modifications made to the records.

B.7.1 By Third-Party Vendor: If the systems under control of Seller or a direct or indirect third party vendor under contract with Seller or any additional parties under contract with the third party are at fault in connection with the Compromised Data Event, Seller shall indemnify and hold harmless the Indemnified Parties from any and all demands, causes of action, losses,

liabilities, judgments, damages, claims (including but not limited to claims of negligence), costs and expenses (including but not limited to attorney's fees), arising therefrom, caused thereby, related thereto, or resulting therefrom. Seller's defense of any claim shall be subject to the Ohio Attorney General's right to appoint counsel and approve settlements.