

**LINCOLN UNIVERSITY**  
**STANDARD CONTRACT TERMS AND CONDITIONS**

**I. TERM OF CONTRACT**

The term of the Contract shall commence on the Effective Date (as defined below) and shall end on the Expiration Date identified in the contract, subject to the other provisions of the Contract.

The Effective Date shall be affixed by Lincoln University ("The University") after the Contract has been fully executed by the Contractor and by the University, all approvals required by the University Contracting Procedures having been obtained and the Contract having been sent to the Contractor.

The University shall issue a written notice to Proceed to the Contractor directing the Contractor to start performance on a date which is on or after the Effective Date. The contractor shall not start the performance of any work prior to the date set forth in the Notice to Proceed and the University shall not be liable to pay the Contractor for any service or work performed or expenses incurred before the date set forth in the Notice to Proceed. No University employee has the authority to verbally direct the commencement of any work under this Contract.

**II. INDEPENDENT CONTRACTOR**

In performing the services required by the Contract, the Contractor will act as an Independent Contractor and not as an employee or agent of the University.

**III. COMPLIANCE WITH LAW**

The Contractor shall comply with all applicable Federal, State and local law, regulations and ordinances in the performance of the Contract.

**IV. COMPENSATION/EXPENSES**

The Contractor shall be required to perform the specified services at the price(s) quoted in the Contract. All services shall be performed within the time period(s) specified in the Contract. The Contractor shall be compensated only for work performed to the satisfaction of the University. The Contractor shall not be allowed or be paid travel or per diem expenses, except as specifically set forth in the Contract.

**V. PAYMENT**

The Contractor shall send an itemized invoice for payment to the address contained either in the Contract or the Special Provisions. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment within 30 days after invoice or delivery, whichever occurs later. The University payment system is set up to make payment within 30 days but it will not be liable for interest or penalties for late payment. The Contractor shall provide the University with a General Release in a form acceptable to the University as a condition of final payment.

**VI. WARRANTY/QUALITY OF SERVICE**

The Contractor warrants that all services performed by the Contractor, its agents and subcontractors, shall be free and clear of any defects in workmanship or materials. Unless otherwise stated in the Contract, all services and parts are warranted for a minimum period of one year or the manufacture's period which ever is longer, following completion of performance by the Contractor and acceptance by the University. The Contractor shall correct any problem with the service and/or replace any defective part with a part of equivalent or superior quality without any additional cost to the University.

If this is a service contract, the Contractor shall perform its services with care, skill, and diligence, in accordance with the applicable professional standards currently recognized by such profession, and shall be responsible for the professional quality, technical accuracy, completeness, and coordination of all reports, designs, drawings, plans, information, specifications, and other items and services furnished under the Contract. Contractor shall comply with all applicable federal, state and local laws, ordinances, codes and regulations in performing its services. If Contractor fails to meet applicable professional standards, Contractor shall without additional compensation correct or revise any errors or deficiencies in its reports, drawings, specifications, designs, and other items or services.

**VII. NON-DISCRIMINATION/SEXUAL HARASSMENT CLAUSE**

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

- A. In the hiring of any employees for the manufacture of supplies, performance of work or any other activity required under the Contract or any Subcontract, the Contractor, Subcontractor (as defined herein) or any person acting on behalf of the Contractor or Subcontractor shall not by reason of gender, race, creed, color, disability, national origin, ancestry or age discriminate against any employee or applicant for employment who is qualified and available to perform the work to which the employment relates. The Contractor further agrees to post in conspicuous places, available to employees and applicants for employment, notices conforming to federal and state law setting forth the provisions of this Non-Discrimination, Sexual Harassment Clause.
- B. Neither the Contractor nor any Subcontractor, nor any person on their behalf, shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under the Contract on account of gender, race, creed, color, disability, national origin, ancestry or age.
- C. Contractors and Subcontractors shall establish and maintain a written sexual harassment policy and shall inform its employees of the policy.
- D. The Contractor and each Subcontractor shall furnish upon request all necessary employment documents and records and permit access to its books, records and accounts by the University or its authorized representatives or designees to verify compliance with this clause.
- E. For purposes of this clause, Subcontractor is defined as any Subcontract over Ten Thousand (\$10,000.00) Dollars. The Contractor shall include the above provisions in all Subcontractors over Ten Thousand (\$10,000.00) Dollars to insure that the provisions of this section will be binding upon each such Subcontractor.

- F. The University may terminate the Contract for violation of the Terms and Conditions of this Non-Discrimination/Sexual Harassment Clause. Upon such termination, all monies due or to become due under the Contract shall be forfeited.

**VIII. CONTRACTOR INTEGRITY PROVISIONS**

- A. The Contractor shall maintain the highest standards of integrity in the performance of this Contract and shall take no action in violation of any State or Federal laws, regulations or other requirements that govern contracting with the University.
- B. The contractor shall not, in connection with this or any other agreement with the University, directly or indirectly, offer anything of value to anyone as consideration for the decision, opinion, recommendation, vote or other exercise of discretion or violation of a known legal right by any Trustee, officer or employee of the University.
- C. The Contractor shall not, in connection with this or any other agreement with the University, directly or indirectly, offer, give or agree to promise to give to anyone any gratuity for the benefit of or at the direction or request of any Trustee, officer or employee of the University.
- D. Except with the consent of the University, neither the Contractor nor a anyone in privity with it, including any Subcontractor or Vendor, shall accept or agree to accept from, or give to, or agree to give to, any person, any gratuity from any person, in connection with the performance of work under the Contract except as provided herein.
- E. The Contractor, upon being informed of any violation of these provisions either has occurred or may have occurred, shall immediately notify the University in writing of the nature of the violation.
- F. The Contractor certifies by execution of the Contract and by submission of each bill or invoice for payment that it has not violated any of the provisions of this clause.

**IX. IMIGRATION REFORM AND CONTROL ACT OF 1986**

By submitting its proposal, the offeror certifies that it does not and will not during the performance of this Contract, employ any illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986.

**X. CONTRACTOR RESPONSIBILITY PROVISIONS**

- A. The Contractor certifies that it is not currently under suspension or debarment by the Commonwealth of Pennsylvania or any other state or the Federal Government and that if the Contractor cannot so certify, then agrees to submit a written explanation of why such certification cannot be made. The Contractor agrees that if it enters into Subcontracts or employs under this Contract any Subcontractor/individual who is currently suspended or debarred by the Commonwealth or any other State or the Federal Government, or becomes suspended or debarred by the Commonwealth or any other State or the Federal Government during the term of the Contract, or any extensions thereof, the University shall have the right to require the Contract to terminate such Subcontracts or employment. Contractor shall flow this clause down to its Subcontractors.

- B. The Contractor certifies that it has all the proper licenses necessary to provide the services required by this Contract or will become so licensed by the anticipated Contract award date stated in the Solicitation.

**XI. ASSIGNMENT OF CONTRACT**

The Contract shall not be assigned by the Contractor, in whole or in part, without prior written consent of the University.

**XII. TESTING AND INSPECTION**

The University reserves the right to conduct any test and/or inspection at any time that it may deem advisable to assure itself that the services or product being provided under the Contract conform to the specifications. The Contractor acknowledges that this provision grants the University certain audit or inspection rights which shall, however, in any way relieve the Contractor of any of its obligations under the Contract nor shall it require the University to conduct any such audit or inspection. The University shall bear the costs of such tests and/or inspections unless it is determined through such tests and/or inspections that the Contractor's services or product does not conform to the Contract Requirements, in which case the Contractor shall reimburse the University for the costs of such tests and/or inspections.

**XIII. PATENT, COPYRIGHT AND TRADEMARK INDEMNITY**

The Contractor warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either; a) the design of any product or process provided or used in the performance of the Contract which is covered by a patent, copyright, or trademark registration or any other right duly authorized by state or federal law; or b) any copyrighted matter in any report document other material provided to the University under the Contract. The Contractor shall defend any suit or proceeding brought against the University on account of any alleged patent, copyright or trademark infringement in the United States of any of the products provided or used in the performance of the Contract. This is upon condition that the University shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same. The University may participate in or choose to conduct, in its sole discretion, the defense of any such action. If information and assistance are furnished by the University at the Contractor's written request, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization.

The Contractor shall indemnify and hold the University harmless from all damages, costs and expenses, including attorney's fees that the Contractor or the University may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any products provided or used in the performance of the Contract. If any of the products provided by the Contractor in such suit or proceeding are held to constitute infringement and the use is enjoined, the Contractor shall, all its own expense and at its option, either procure the right to continue use of such infringement products, replace them with non-infringement equal performance products or modify them so they are no longer infringing. If the Contractor is unable to do any of the preceding, the Contractor agrees to remove all the equipment or software which are obtained contemporaneously with the infringing product or, at the option of the University, only those items of equipment or software which are held to be infringing, and to pay the University: 1) any amounts paid by the University towards the purchase of the product, less straight line depreciation; 2) any license fee paid by the University for the use of any software, less an amount for the period of usage; and 3) the pro rata portion of any maintenance fee representing the time remaining in any period of maintenance paid for. The obligations of the Contractor under this paragraph continue without time limit. No costs or expenses shall be incurred for the account of the Contractor without its written consent.

**XIV. OWNERSHIP RIGHTS**

The University shall have unrestricted authority to reproduce, distribute and use any submitted report, data, or material, and any software or modifications and any associated documentation that is designed or developed and delivered to the University as part of the performance of the Contract.

**XV. AUDIT PROVISIONS**

The University shall have the right, at reasonable times and at a site designated by the University, to audit the books, documents and records of the Contractor to the extent that the books, documents and records relate to the Contractor's performance under the Contract including the preparation of its proposal. Contractor shall maintain such books, documents and records for three (3) years after final payment. The Contractor shall give full and free access to all records to the University and/or their authorized representatives for the period noted herein.

**XVI. DEFAULT**

A. The University may, subject to the provisions of Paragraph XVIII, Force Majeure, and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in Paragraph XIX, Termination Provisions) the whole or any part of this Contract for any of the following reasons:

1. Failure to begin work within the time specified in the Contract or as otherwise specified;
2. Failure to perform the work with sufficient labor, equipment, or material to insure the completion of the specified work in accordance with the Contract Term;
3. Unsatisfactory performance of the work;
4. Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
5. Discontinuance of work without approval;
6. Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
7. Insolvency or bankruptcy;
8. Assignment made for the benefit of creditors;
9. Failure or refusal within 10 days after written notice by the University, to make payment or show cause why payment should not be made, of any amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;
10. Failure to protect, to repair, or to make good any damage or injury to property or the environment; or
11. Breach of any provision of this Contract.

Revised: 10/17/03

- B. In the event the University terminates this Contract in whole or in part as provided in Subparagraph a, above, the University may procure, upon such terms and in such manner as it determines, services similar or identical to those so terminated, and the Contractor shall be liable to the University for any reasonable excess costs for such similar or identical services included within the terminated part of the Contract.
- C. If the Contract is terminated as provided in Subparagraph a, above, the University, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver immediately to the University in the manner and to the extent directed by the University, such partially completed work, including where applicable, reports, working papers and other documentation, as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract as has been terminated. Except as provided below, payment for completed work accepted by the University shall be at the Contract price. Except as provided below, payment for partially completed work including, where applicable, reports and working papers, delivered to and accepted by the University shall be in an amount agreed upon by the contractor and University. The University may withhold from amounts otherwise due the Contractor for such completed or partially completed works, such sum as the University determines to be necessary to protect the University against loss.
- D. The rights and remedies of the University provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- E. The University's failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by the University of its rights and remedies in regard to the event of default or any succeeding event of default.

**XVII. FORCE MAJEURE**

Neither party will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

The Contractor shall notify the University orally within five (5) business days and in writing within ten (10) business days of the date on which the Contractor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the Contract is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Contractor shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the University may reasonable request. After receipt of such notification, the University may elect either to cancel the Contract or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay.

In the event of a declared emergency by competent governmental authorities, the University by notice to the Contractor, may suspend all or a portion of the Contract.

**XVIII. TERMINATION PROVISIONS**

The University has the right to terminate this Contract for any of the following reasons. Termination shall be effective upon written notice to the Contractor.

- A. **TERMINATION FOR CONVENIENCE:** The University shall have the right to terminate the Contract for its convenience if the University determines termination to be in its best interest. The Contractor shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Contractor be entitled to recover loss of profits.
- B. **TERMINATION FOR CAUSE:** The University shall have the right to terminate the Contract for Contractor default under Paragraph XVII, Default, upon written notice to the Contractor. The University shall also have the right, upon written notice to the Contractor, to terminate the Contract for other cause as specified in this Contract or by law. If it is later determined that the University erred in terminating the Contract for cause, then, at the University's discretion, the Contract shall be deemed to have been terminated for convenience under the Subparagraph A.

**XIX. NO THIRD-PARTY BENEFICIARY RIGHTS**

No provisions of this Contract shall in any way inure to the benefit of any third person (including the public at large) so-as to constitute any such person a third-party beneficiary of the Contract or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

**XX. APPLICABLE LAW**

The Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Contractor agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

**XXI. INTEGRATION**

The Contract, including all referenced documents, constitutes the entire agreement between the parties. If any provision of this contract is found invalid, it shall not invalidate the remaining provisions of the Contract. No agent, representative, employee or officer of either the University or the Contractor has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with the Contract, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the Contract. No modifications, alternations, changes, or waiver to the Contract or any of its terms shall be valid or binding unless accomplished by a written amendment. All such amendments will be made using the appropriate University form.

**XXII. DRUG-FREE WORKPLACE**

The Contractor acknowledges and certifies that it understands the following acts by its employees and/or agents or subcontractors performing services on Lincoln University Property are prohibited:

- A. The unlawful manufacture, distribution, dispensing, possession or use of alcohol or other drugs; and
- B. Any drug that would cause impairment or incapacitation.

The Contractor further acknowledges and certifies that it understands that a violation of these prohibitions constitutes a breach of Contract and may result in default action being taken by the University, in addition to any criminal penalties that may result from such conduct.

**XXIII. WAIVER OF CONSEQUENTIAL DAMAGES**

The Contractor waives all incidental consequential and punitive damages that may arise out of its performance of the Contract including but not limited to loss of anticipatory profits, loss of other business, loss of financing or damage to reputation.

**XXIV. INDEMNIFICATION**

- A. Contractor agrees to defend, indemnify and protect and hold harmless the University, its trustees, its officers, employees, agents, from and against any and all suits, claims, liabilities, demands, judgments, losses or damages, of whatsoever kind or nature arising from, out of, or in connection with the performance of this Contract, including, but not limited to, expenditures for and cost of investigations, hiring or expert witnesses, court costs, counsel fees, settlements, judgments, or otherwise. This indemnification obligation is not limited by any limitation in any insurance obligation set forth herein, or limits of liability set forth herein and survives termination or completion.
- B. In addition, the Contractor further agrees to name the University as an additional insured upon and under the comprehensive general liability policy referred to herein above and to furnish the University with a copy or certificate thereof prior to commencement of work, service or operation designated in this Contract. Contractor further agrees to maintain its policy in full force and effect and effect for the duration of said work or operations and to provide continuing insurance coverage for any claims arising under or related to the Contract but not asserted until after Contract completion or termination. Failure on the part of the Contractor to provide a Certificate of Insurance or Endorsements reflecting the addition of Lincoln University as an additional insured or failure by Lincoln University to demand same prior to the commencement of work shall not be deemed or considered a waiver of this provision.

**XXV. INSURANCE**

The Contractor shall keep in force, in its name, during the term of this Agreement adequate insurance with regard to Workmen's Compensation, Public liability and Blanket Fidelity Bond Insurance, and will furnish Certificates of Insurance upon the start of services to Lincoln University upon signing of this Agreement, and will provide copies of the applicable policies to Lincoln University within fourteen (14) days of execution of this Contract. The Certificates of Insurance shall provide thirty (30) days written notice of cancellation to the University and shall indicate the following:

A. Worker's Compensation and Employer's Liability

In accord with State law of the jurisdiction where service is to be performed. Employer's liability limit not less than \$1,000,000 per incident with a \$30,000,000 umbrella and not the lesser of the amount stated or cost of Lincoln University services rendered.

1. Coverage to include the interest of Lincoln University in the event Lincoln University is legally held as employer or dual employer in any worker's compensation action.

B. Comprehensive General Liability Coverage – including:

1. Assault and Battery Endorsement – intentional as well as accidental assaults.
2. Personal Injury Endorsement – false arrest, libel, slander, invasion of privacy, etc.
3. Board Form Property Damage Endorsement – damage to property in the care, custody or control of the Contractor.
4. Errors and Omissions Enforcement – for security officers: failure to perform their duties; for investigation: professional malpractice.
5. Independent contractors – provides protection against suits arising from the work of independent contractors.
6. Contractual Liability – protects the Contractor against liability which is assumed under the indemnity clause of the Contract.

C. Auto Liability Including Non-Ownership and Hired Car Endorsement

Provides the Contractor with protection against a suit arising out of an employee's use of its vehicles, the employee's personal vehicle or a rented vehicle while working for the employer.

Notes:

1. The limits under items 1 through 6 above should not be less than One Million Dollars (\$1,000,000) combined single limit or equivalent/Two Million Dollars (\$2,000,000) aggregate. Lincoln University shall be named as additional insured with coverage as respects Lincoln University to be primary over any other insurance coverage which may otherwise apply.
2. The Company which insures the Contractor shall be licensed to do business within the Commonwealth of Pennsylvania.

**XXVI. CONFIDENTIALITY**

The Contractor agrees to maintain as confidential all information regarding this Contract, including its contents, as well as all Lincoln University information, machinery, equipment, processes, products, activities, students or employees and not to disclose such information to any company personnel other than those who require it in connection with the performance of services under this Contract, or to any third persons. The Contractor further agrees to inform all of its employees assigned to Lincoln University to whom disclosures of Lincoln University information must be made, of the Contractor's and employee's obligation to maintain the confidentiality. The Contractor may not, without University approval, use as part of its advertising, the fact that it is a contractor for the University or may it use as part of its advertising the name shield or other identifying symbol of the University. This clause survives expiration and termination of the Contract.

**XXVII. SUBCONTRACTS**

No portion of the work shall be subcontracted without prior written consent of Lincoln University. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish to Lincoln University the names, qualifications and experience of its proposed subcontractor(s). The Contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the Contract. No portion of this clause shall be construed or interpreted to mean that Lincoln University does not encourage subcontracting with small businesses or minority/women-owned businesses.

**XXVIII. MINORITY-OWNED BUSINESS SUBCONTRACTING AND REPORTING**

Because of its recognized role in the education of minority students, Lincoln University views with great importance affirmative efforts to employ on its contracts women and other minorities. The Contractor therefore agrees to use its best efforts to give women and other minorities the maximum practicable opportunity to participate in its contracts and in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract. Upon request the Contractor should be prepared to provide evidence or documentation that they have utilized their best efforts concerning minority participation.

