UNIVERSITY OF NEBRASKA

AGREEMENT FOR CONSULTING SERVICES
BETWEEN
THE BOARD OF REGENTS
UNIVERSITY OF NEBRASKA

AND

<CONSULTANT Legal Name>
<CONSULTANT Street Address>
<CONSULTANT City, State Zip Code>

THIS AGREEMENT made and entered into Lincoln, Nebraska on <date>, BY AND BETWEEN the Board of Regents of the University of Nebraska,

hereinafter called "OWNER" or “University”,

AND <Consultant Legal Name>
<Consultant Address>
<Consultant City, State, Zip Code>

hereinafter called "DESIGN PROFESSIONAL" or “Vendor”,

FOR the following project:

PROJECT NO.: <No.>

PROJECT NAME: <Name/Description>

DESCRIPTION OF SERVICES: <Scope of Work/Services>

DESIGN STANDARDS - CURRENT EDITION: https://nebraska.edu/offices/facilities-planning-and-capital-programs/services/capital-construction/design-standards/

APPENDIX NO. 1: PROJECT TEAM AND SCHEDULE

APPENDIX NO. 2: CERTIFICATE OF INSURANCE

APPENDIX NO. 3: MISCELLANEOUS TERMS AND CONDITIONS

The Owner and DESIGN PROFESSIONAL agree as set forth in:

Section I. Services and Terms of Compensation
Section II. Terms and Conditions of Agreement

SECTION I

SERVICES AND COMPENSATION
ARTICLE 1

SERVICES

THE DESIGN PROFESSIONAL shall provide the following basic professional services for the Owner:

Basic Services shall be coordinated through the Facilities Management/Architectural and Engineering Services member of staff assigned to the project and shall include but not be limited to:

General:

- Submit meeting notes within 3 days of meeting date for University review and approval.

Design Phase:

- Investigate and verify existing conditions thoroughly. If necessary, review with the University alternative approaches to design and construction of the Project.
- Schematic and Construction Document (50% drawing completion and Outline Specifications) phase submittals for review and approval by the University.
- Cost estimate at end of each phase to verify construction cost is within budget.
- Adhere to approved project scope, budget and schedule.
- Construction Documents will include drawings (CADD or Revit) and specifications. Provide applicable divisions 2 through 48 as required for projects requiring a Bid phase. Specifications shall be specific to the Work involved and shall list all known acceptable product manufacturers. The University will provide the "front end" (Sections 00-01) Instructions to Bidders, Bid Proposal form, general conditions, etc., however the DESIGN PROFESSIONAL shall provide Sections 00 01 05 Certifications, 00 01 10 Table of Contents (technical sections), 00 01 15 List of Drawing Sheets, 01 21 00 Allowances, 01 22 00 Unit Prices, 01 23 00 Alternates, 01 71 21 Specialty Engineering Requirements and additional 00-01 sections when required by the OWNER.
- Construction Documents to be sealed and signed by the DESIGN PROFESSIONAL and by the DESIGN PROFESSIONAL's sub consultants. The final documents are the possession of the OWNER.
- The design shall conform to the current International Building Code, National Fire Prevention Assoc. Code (2009), the latest editions of the Uniform Mechanical and Plumbing Codes, the National Electrical Code, ASHRAE, SMACNA and all other applicable laws, codes and standards required by federal and state law and the University's Design Standards.

Bidding and Award Phase:

- Advise on optimum bid opening date.
- Assist with marketing and promoting the project by contacting contractors and subcontractors.
- Attend pre bid conference and site visit and issue any addenda (after approval by the University) that may be necessary to clarify or modify the bid documents.
- Review and approve prior approval substitutions.
- Provide a log of questions and responses during bidding.
- Review the bids, contractors and sub-contractors and make an award recommendation of the University.

Construction and Closeout Phase:

- Attend first construction orientation meeting with successful contractor and thereafter <weekly, biweekly, monthly> meetings and site visits to observe the work.
- Approve contractor's submittals and shop drawings.
- Respond to contractor's RFI's (Requests for Information). Prepare or advise the Owner on preparation of CPR's (Change Proposal Requests), CCD's (Construction Change Directives) and Change Orders. Review and act on CPR's, CCD's and Change Orders.

- Final meeting and site visit. Punch list and substantial completion.
- The DESIGN PROFESSIONAL shall deliver to the OWNER one (1) complete set of the project record drawings showing all work developed in the DESIGN PROFESSIONAL's office, plus all change orders, revisions, details, etc., recorded on the Project site by the Contractor and the OWNER'S REPRESENTATIVE made during the period of construction. The Contractor will be required to deliver to the DESIGN PROFESSIONAL one complete set of project drawings marked up with all changes that occurred during construction at the site. The DESIGN PROFESSIONAL will be responsible for the accuracy of drawings developed in the DESIGN PROFESSIONAL's office. DESIGN PROFESSIONAL will not be responsible for the changes at the site that are not provided by the Contractor. Project record drawings shall be in REVIT, CADD and PDF formats. Project record drawings are the property of the OWNER and shall be due before final payment is made.

In addition to the project record drawings and specifications specified above, the DESIGN PROFESSIONAL shall also provide to the OWNER:

- Computer Aided Design and Drafting (CADD) copy of the project record drawings in electronic form, which consists of the format, organization, and type of drawings, as directed by the OWNER, and as described in the current version of the University's Design Standards. The requirement for electronic project record drawings shall consist of all information produced for the Construction Documents, including site and floor plans, major building elevations, cross-sections, minor cross-sections and detail drawings. The electronic form of the project record drawings must be compatible with the OWNER'S Computer Aided Design and Drafting (CADD) system.

ARTICLE 2

COMPENSATION

2.1 The Owner shall compensate the DESIGN PROFESSIONAL for the services described in Section 1, Article 1 in accordance with the Terms and Conditions of this Agreement as follows:

Design, Bidding & Award Phase:	**$ <75%>**
Construction and Closeout Phase:	**$ <20%>**
Final Close-Out and Receipt of Record Drawings	**$ <5%>**
TOTAL NOT TO EXCEED FEE	**$ <TOTAL>**

Fee payments will be made monthly upon receipt of an invoice providing a breakdown of the above phases and the percentage complete of each phase, total billed to date, current billing and balance left to bill.

2.2 FOR REIMBURSABLE EXPENSES- Amounts expended as defined in Section II, Article 3 and 5, will be billed at direct cost.

Reimbursable expense invoices must be submitted separately from fee invoices and must show a breakdown of the above categories and the balance remaining. Receipts and/or mileage calculations must be attached.

2.3 IF SCOPE of the project is changed materially, compensation shall be subject to renegotiation.

2.4 Hourly rates for approved additional services:

Principal:	_____
Project Architect:	_____
Project Structural Engineer:	_____
Project Electrical Engineer:	_____
Project Mechanical Engineer:	_____

2.5 If the services covered by this Agreement have not been completed within 12 months of the date hereof, the amount of compensation shall be subject to renegotiation to reflect any added costs not reasonably foreseeable at the time of execution of this Agreement.

2.6 CHANGE ORDERS. For design services in connection with change orders that are not due to errors or omissions of the DESIGN PROFESSIONAL, the DESIGN PROFESSIONAL will receive a fee of 8 percent of the costs of change order work designed up to $10,000 and a fee based upon an agreed percentage of 6 percent of the cost of all change order work designed over $10,000.

2.7 In the event the cost of the Project shall be increased by alterations and/or additions and/or deletions of any kind which shall not require additional drawings, specifications, and/or supervision, then no additional compensation shall be due or payable to the DESIGN PROFESSIONAL.

2.8 Change orders which are due to the DESIGN PROFESSIONAL's error or omission after the Owner's approval of design for which additional design services are necessary will not be compensated.

2.9 Certification - The DESIGN PROFESSIONAL certifies that the wage rates and other factual unit costs supporting compensation for professional services set forth in this Agreement are accurate, complete, and correct at the time of the signing of this Agreement.

SECTION II

TERMS AND CONDITIONS OF AGREEMENT BETWEEN OWNER AND DESIGN PROFESSIONAL

ARTICLE 1

THE OWNER'S RESPONSIBILITIES

1.1 The Owner shall provide full information regarding requirements for the Project.

1.2 The Owner shall designate a representative authorized to act in the Owner's behalf with respect to the Project. The Owner or such authorized representative shall examine the documents submitted by the DESIGN PROFESSIONAL and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the DESIGN PROFESSIONAL's services.

1.3 The Owner shall furnish required information as expeditiously as necessary for the orderly progress of the work, and the DESIGN PROFESSIONAL shall be entitled to rely upon the accuracy and completeness thereof.

ARTICLE 2

DIRECT PERSONNEL EXPENSE

2.1 Direct Personnel Expense is defined as the salaries of professionals, technical, and clerical employees engaged on the Project by the DESIGN PROFESSIONAL.

ARTICLE 3

REIMBURSABLE EXPENSES

3.1 OWNER, in its sole discretion, may decline to reimburse expenses that are not pre-approved or fail to comply with applicable OWNER policies and procedures. DESIGN PROFESSIONAL shall submit adequate receipts and documentation as requested by OWNER to support reimbursement of expenses. "Reimbursable Expenses" are in addition to the Compensation for Basic and Additional Services and, include, to the extent allowed by the University of Nebraska Travel Policy located at https://nebraska.edu/-/media/unca/docs/offices-and-policies/policies/policies/university-of-nebraska-travel-policy.pdf, actual expenditures made by the DESIGN PROFESSIONAL, his employees, or his professional DESIGN PROFESSIONALS in the interest of the Project for the expenses listed in the following subparagraphs.

3.2 Expense of transportation and living (not including Direct Personnel Expense) approved by the Owner in writing when traveling in connection with the Project other than as required to perform basic services.

3.3 Expense of reproductions to include booklets required, postage and handling of Drawings and Specifications at cost, but excluding those required for the Owner's review and excluding drawings "As Builts" at the completion of the Project.

3.4 If authorized by the Owner in writing, expense of overtime work requiring higher than regular rates or additional renderings or models for the Owner's use, not previously specified.

ARTICLE 4

PAYMENTS TO THE DESIGN PROFESSIONAL

4.1 Payments on account of the DESIGN PROFESSIONAL's Services and for Reimbursable Expenses shall be as defined in Article 2 and 3.

4.2 Initial payment to the DESIGN PROFESSIONAL may be requested antecedent to the availability of funds and no interest will be due the DESIGN PROFESSIONAL on deferred billings.

4.3 No deduction shall be made from the DESIGN PROFESSIONAL's compensation on account of penalty, liquidated damages, or other sums withheld from payments to contractors.

4.4 If the Project is suspended for more than three months or abandoned in whole or in part, the DESIGN PROFESSIONAL shall be paid his/her compensation for services performed prior to receipt of written notice from the Owner of such suspension or abandonment, together with Reimbursable Expenses then due and all termination expenses as defined in Article 6, Section II, resulting from such suspension or abandonment. If the Project is resumed after being suspended for more than three months, the DESIGN PROFESSIONAL's contract shall be subject to renegotiation.

ARTICLE 5

ACCOUNTING RECORDS

5.1 Records of Reimbursable Expenses and expenses pertaining to Additional Services of the Project and for services performed on the basis of a Multiple of Direct Personnel Expense shall be kept on a generally recognized accounting basis and shall be available to the Owner or his authorized representative at mutually convenient times.

ARTICLE 6

TERMINATION OF AGREEMENT

6.1 This Agreement may be terminated by either party upon seven days' written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.

6.2 In the event of termination due to the fault of parties other than the DESIGN PROFESSIONAL, the DESIGN PROFESSIONAL shall be paid his/her compensation for services performed to termination date, including Reimbursable Expenses then due and all Termination Expenses.

6.3 Termination Expenses are defined as Reimbursable Expenses directly attributable to termination for which the DESIGN PROFESSIONAL is not otherwise compensated, plus ten percent of the compensation for services earned to the time of termination.

6.4 The DESIGN PROFESSIONAL warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for him, to solicit or secure this Agreement and that he has not paid, other than a percentage, gift or any other consideration contingent upon or resulting from award or making of this Agreement.

6.5 Upon violation of Section 6.4, the Owner shall have the right to terminate this Agreement without liability and, at his discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage or consideration.

ARTICLE 7

MISCELLANEOUS PROVISIONS

7.1 Ownership of Documents - All Models, Drawings and Specifications are the property of the Owner whether the project for which they are made is executed or not.

7.2 Successors and Assigns - The Owner and the DESIGN PROFESSIONAL each binds himself, his partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the DESIGN PROFESSIONAL shall assign, sublet or transfer his interest in this Agreement without the written consent of the other.

7.3 Extent of Agreement - This Agreement represents the entire and integrated Agreement between the Owner and the DESIGN PROFESSIONAL and supersedes all prior negotiations, representations or agreements, either written or oral for this project. This Agreement may be amended only by written instrument signed by both Owner and DESIGN PROFESSIONAL.

7.4 Insurance - Before beginning operations under and throughout the life of this contract, the DESIGN PROFESSIONAL shall furnish the Owner a Certificate of Insurance showing the issuance of insurance in limits as specified in the attached Certificate by companies licensed to do business in the State of Nebraska. All such certificates shall be submitted on the University standard form (attached) or on an accord certificate of liability as outlined on UNFP 6.3.1.1.4 and in strict accordance with the attached Preparation Instructions. The DESIGN PROFESSIONAL shall be solely responsible for any and all costs, losses or damages if it fails to maintain the required insurance for all work performed under this Agreement.

7.5 Waivers - No waiver of any of the conditions or provisions of this contract shall be implied; and no waiver expressed in writing shall affect any provision or condition of this contract other than the particular one specified in such a written waiver, and that particular one only for the time and in the manner specifically stated in the written waiver.

7.6 The DESIGN PROFESSIONAL is required to conform to the current edition of the University's Design Standards, which are incorporated herein by this reference. It shall be the responsibility of the DESIGN PROFESSIONAL to obtain such standards from the Facilities Management Project Manager. The DESIGN PROFESSIONAL will be responsible for any and all costs related to the DESIGN PROFESSIONAL'S negligent or intentional failure to conform to these standards, including but not limited to the replacement of systems or Work that does not conform to the standards. The DESIGN PROFESSIONAL may only depart from these standards if written permission is granted from the University's Manager of Architectural and Engineering Services.

7.7 Drug Free Workplace - The DESIGN PROFESSIONAL agrees that in the performance of the Agreement, neither the DESIGN PROFESSIONAL nor any employee of the DESIGN PROFESSIONAL shall engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity covered by the Agreement. The University reserves the right to request a copy of the DESIGN PROFESSIONAL's Drug Free Workplace Policy. The DESIGN PROFESSIONAL further agrees to insert a provision similar to this statement in all subcontracts for services required under this Agreement.

7.8 Photographs and facsimiles of this construction project, or components of the project, must not be used without the written consent of the University and an opportunity to review the photograph or facsimile and must not be used in a manner which would, in the opinion of the University, suggest the University endorses the product or service depicted in the photograph or facsimile.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first stated above.

<CONSULTANT LEGAL NAME>	**BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA**
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____

APPENDIX NO. 1

PROJECT TEAM:

Principal: _____

Manager: _____

Architect: _____

Structural Engineer: _____

Electrical Engineer: _____

Mechanical Engineer: _____

Civil Engineer: _____

Cost Estimator: _____

Construction Administrator: _____

SCHEDULE:

Schematic Design Phase Documents & Checklist due for Review _____

50% Construction Documents Phase Plans & Specifications & Checklist Due for Review _____

95% Complete Construction Document Phase Plans & Specifications for Review _____

100% Complete Construction Documents – Issued for Bid or Quote Due _____

Anticipated Bid Date _____

Anticipated Substantial Completion Date _____

Contract Completion Date _____

APPENDIX NO. 2

Certificate of Insurance Attached

APPENDIX NO. 3
Miscellaneous Terms & Conditions

1. **General.** The Agreement may not be changed in any way except by an instrument in writing signed by both parties. The Contract Documents cancel and supersedes any prior understandings or agreements between the parties with respect to the subject matter hereof. Failure of any party to enforce its right under the Contract Documents shall not constitute a waiver of such rights or of any other rights under the Contract Documents.

2. **Termination for Cause.** Owner may terminate the Agreement at any time if Vendor fails to carry out its terms or fails to make substantial progress toward the fulfillment of those terms. In such an event, Owner shall provide Vendor with a thirty (30) day written notice of the terms in breach. If after such notice, Vendor fails to remedy the breach within those 30 days, Owner may immediately cancel the Agreement.

3. **Contract Assignment.** The Agreement shall not be transferred or assigned without prior written consent of Owner.

4. **Indemnity, General and Patent**. Vendor shall indemnify, and save harmless, Owner and its respective officers, agents and employees, from and against any and all liabilities, and losses whatsoever, including without limitation, costs and expenses, in connection therewith, on account of, or by reason of, injury to or death of, any person whosoever, or loss of or damage to any property whatsoever, suffered or sustained in the case of, or in connection with, Vendor's negligent, wrongful, or intentional acts, errors, or omissions, or breach of this Agreement, except for that liability and loss, arising from the acts or omissions, of Owner or its agents. With respect to anything provided to Owner by Vendor, Vendor shall indemnify Owner and its respective officers, agents and employees against liability, including costs and attorney's fees for infringement of any United States patent, copyright, trade infringement or other intellectual property right arising out of the manufacture, delivery and use of such by Owner.

5. **Governing Law; Venue.** The laws of the State of Nebraska shall govern. Any dispute arising under the Agreement, which is not settled by agreement of the parties, shall be resolved in forums (except for applicable federal appellate courts) located in the State of Nebraska.

6. **Force Majeure.** Neither party shall be liable to the other for damages for any delay in performance arising out of causes beyond its reasonable control and without its fault or negligence, including without limitation: (1) fire, flood or water damage, elements of nature or other acts of God, including any of the foregoing that are harmful to electronic circuitry; (2) outbreak or escalation of hostilities, war, riots, or civil disorders in any country; (3) act or omission of the other party or any governmental authority, (4) labor disputes (whether or not the employees' demands are reasonable or within the party's power to satisfy), (5) non-performance by a third party (including any voice or data telecommunications common carrier), (6) failures or fluctuations in telephone, computer or other telecommunications equipment or lines or other equipment, (7) the real, potential, or credible threat of terrorist activity, or (8) a health emergency (e.g. serious outbreak of contagious disease such as a influenza pandemic) which in the judgment of Owner poses a serious threat to the public health. In the case of any such excusable delay, the non-performing party will be excused from performance of any affected obligation only for so long as the cause of the excusable delay prevails and such party continues to use commercially reasonable efforts to re-commence performance of its obligations as soon as possible; provided however, that the parties may mutually agree that such excusable delay is cause to cancel the Agreement in its entirety, in which case neither party shall be liable to the other for any further performance in relation obligations arising after cancellation.

7. **Compliance with Laws and Regulations; Gramm Leach Bliley; University of Nebraska Policies.** This Agreement must comply with all applicable federal, state and local laws, specifically including all laws and regulations related to the protection and security of any personal information gathered by Vendor, such as the Gramm Leach Bliley Act implemented at the University of Nebraska by Presidential Executive Memorandum No. 26 which requires specific vendor contract provisions; and all other applicable policies of the University of Nebraska, including those stated within the University of Nebraska Travel Policy (located at https://nebraska.edu/-/media/unca/docs/offices-and-policies/policies/policies/university-of-nebraska-travel-policy.pdf). Vendor agrees to indemnify Owner against any loss, cost, liability, or damage by reason of Vendor's violation of any applicable law or regulation. Vendor must be qualified to conduct the business necessary to the performance of the Agreement in the State of Nebraska throughout the duration of the Agreement term or any renewal thereof. Vendor shall obtain, at its own cost and expense, all necessary licenses, professional certifications and permits and shall assume the responsibility for and pay all applicable fees and all other taxes, which are now or may be imposed in the future by any governmental authority arising out of the conduct of Vendor's business.

8. **Discrimination including Sexual Harassment.** State and federal law, as well as University of Nebraska Bylaws, policies, and guidelines prohibit discrimination (as defined therein) including harassment and retaliation, against students, employees, and other members of University community. Prohibited types of discrimination include discrimination on the basis of race, color, ethnicity, national origin, sex (including sexual harassment), pregnancy, sexual orientation, gender identity, religion, disability, age, genetic information, veteran status, marital status, political affiliation, and any other protected status. Vendor shall exercise control over itself, its employees, agents, contractors, and affiliated parties to prohibit acts of discrimination, including sexual harassment, against University students, employees, and other members of the University community. Vendor shall cooperate with University following any report of discrimination. In the event University determines that Vendor or an employee, agent, contractor, or other person affiliated with Vendor has engaged in discrimination, including harassment, or other inappropriate conduct, Vendor will take prompt and effective action, in accordance with University's direction, to prevent recurrence of the conduct and to correct its effects, which may include removal of Vendor or the employee, agent, contractor, or

other person affiliated with Vendor from performing and/or satisfying any obligation imposed on Vendor pursuant to this Agreement. Vendor's failure to comply with University's directive or any other part of this provision may be cause for immediate termination of this Agreement. Vendor acknowledges that University may have obligations to report any allegations or incidents of discrimination, including sexual harassment. Vendor and employees, agents, contractors, and other persons affiliated with Vendor who are directly performing and/or satisfying any obligation imposed on Vendor pursuant to this Agreement or present on University premises shall participate in any training as may be required by University from time to time, including training regarding sexual harassment..

9. **Drug Free Workplace.** Vendor agrees that in the performance of this Agreement, neither Vendor nor any of its employees shall engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity covered by the Agreement. Owner reserves the right to request a copy of Vendor's Drug Free Workplace Policy. Vendor further agrees to insert a provision similar to this statement in all subcontracts or services hereunder.

10. **Weapons Policy.** Possession of dangerous weapons (concealed or unconcealed) on University property, on the work site, in University vehicles, or in personal vehicles when on University property shall be a violation of Owner's policy. (A dangerous weapon shall include guns, knives, explosives, or any other device as determined by Owner, which in the manner used or intended is capable of producing death or bodily injury. Devices authorized by the Vice Chancellor for Business and Finance and/or provided to its employees for the purpose of carrying out work responsibilities shall not be deemed dangerous weapons for the purpose of this policy.) Violations of this policy shall make the offender subject to appropriate disciplinary action. Should the Owner in its reasonable judgment, determine that Vendor, or its employee or agent, has committed an act in violation of this policy, the Vendor agrees as a term and condition of the Agreement, to cause such person and weapon, to be removed from the project site, and from the Owner's premises, and to take such other action as may be reasonably necessary, to ensure compliance with this weapons policy.

11. **Public Records**. Under Neb. Rev. Stat. §§ 84-712 to 84-712.09, information or records of or belonging to University regarding, related to, or part of this Agreement will be open to public inspection and copying unless exempted from disclosure in accordance with University's interpretation and application of applicable law. It shall be the sole responsibility of Vendor (a) to notify University of requested redactions to any such information or records that may otherwise be required to be open to public inspection and copying and (b) to indicate the legal basis for such requested redactions. In addition, Vendor shall defend any challenge to such requested redactions at its own expense. Vendor's failure to request redactions to any information or records released by University under this section shall constitute a complete waiver of any and all claims for damages caused by any such release

12. **Proprietary Information; Confidential Employee Information; HIPAA; FERPA.** It is to be expected that the parties to the Agreement may find it necessary to reveal certain proprietary information to each other. The Agreement may, when proprietary information is exchanged, include certain provisions to mutually protect against the use and disclosure of the proprietary information of each party. In the unusual circumstance that the Agreement should result in the sharing of employee information protected by the law or University of Nebraska policy, information protected by the Health Insurance Portability and Accountability Act, information protected by the Family Educational Rights and Privacy Act of 1974, or any other information deemed confidential and protected by the law, the parties to the Agreement agree to maintain the confidentiality of such information to the extent and manner required by the law and University policy.

13. **Sub-Vendors.** Vendor shall not subcontract all or substantially all of any facet of the Work without the prior written approval of Owner. Vendor shall be fully responsible for the acts and omissions of its sub-vendors and of the persons directly or indirectly employed by them. Every sub-vendor shall be bound by the terms of the Contract Documents; provided however, that no contractual relationship shall exist between any sub-vendor and Owner, unless it is evidenced in a separate contract independent of the Agreement with Vendor.

14. **Unavailability of Funding**. Due to possible future reductions in state and/or federal funds, University cannot guarantee the continued availability of funding of this Agreement notwithstanding the consideration contained within this Agreement. In the event funds to finance this Agreement become unavailable, either in full or in part, due to such reductions, University may terminate this Agreement or reduce the consideration upon notice in writing to Vendor. Said notice shall be delivered by certified mail (return receipt requested) or in person (with proof of delivery). University shall be the final authority as to the availability of funds. The effective date of such termination or reduction in consideration shall be the actual effective date of the elimination or reduction of funding. In the event of a reduction in consideration, Vendor may cancel this Agreement as of the effective date of the proposed reduction upon the provision of advance written notice to University. Vendor shall be entitled to receive just and equitable compensation for any satisfactory work performed up to the effective date of the termination. In the event of unavailability of funding, University shall not be liable for any penalty, expense, or liability, or for general, special, incidental, consequential, or other damages resulting therefrom**Legislative Funding Out Clause.** Notwithstanding any provision in the Agreement to the contrary, if the legislative body appropriating funds, does not allocate sufficient funds to allow Owner to make any periodic payment agreed to in the Agreement for any future fiscal period, Owner will not be obligated to pay the Agreement balance remaining at the time of the governmental funding short-fall.

15. **Parking**. Owner shall not be responsible for providing parking for Vendor's parking needs. Vendor and/or its employees and agents will be solely responsible for any fines resulting from parking violations occurring on Owner's property. It is recommended that Vendor and any temporary employees contact the campus' parking and transit services to obtain information regarding parking and to obtain permits.

16. **Building Rules and Regulations; Tobacco Use.** Employees of Vendor and any sub-vendors shall comply with all University rules and regulations pertaining to conduct in Owner's facilities. Owner reserves the right to request the removal or replacement of Vendor or sub-vendor employee who fails to comply with such rules and regulations. All Buildings, Property and University owned vehicles are tobacco-free. Use of tobacco products is not permitted in or on any Owner Facility/Property. The Vendor is expected to respect this tobacco-free policy and fully comply with it.

17. **Use of Premises.** To the extent that the Agreement requires Vendor or its employees or agents to be present on or within Owner's properties, then Vendor shall limit its presence and activities to such areas as are reasonably necessary in order to perform under the Agreement. The Vendor shall take such precautions as are required to avoid damage to buildings, facilities, utilities, ground resources, trees and landscape amenities, and other properties adjacent to Vendor's activities within the scope of the Agreement and agrees to be responsible and/or carry out any repairs for which it is liable, as a result of its performance under the Agreement.

18. **Hazardous Waste Generated by Vendors.** Any hazardous waste, which is generated from the performance of the Agreement, shall be properly disposed of by Vendor, in a timely fashion, and in accordance with applicable hazardous waste laws and regulations. The cost for hazardous waste management and disposal is Vendor's responsibility. Should Owner deem it prudent to dispose of any hazardous waste left on its property, as a result of Vendor's failure to meet its responsibilities, all costs associated with such disposal shall be deducted from any amount yet to be paid to the Vendor and/or billed to the Vendor. University Environmental Health Services is to be notified of all hazardous waste issues. Any non-hazardous waste generated in the performance of this Agreement must be disposed of off campus by Vendor.

19. **Delivery; F.O.B.; Shipping.** Vendor shall bear all costs of transportation, packing, crating, delivery, installation, storage, and service under warranty for any goods or related services, delivered pursuant to the Agreement. Vendor shall be responsible for and make delivery, including costs of delivery, cartage, temporary storage, off-loading costs, and insurance, F.O.B. destination: University of Nebraska. Unless otherwise specified, all shipments will utilize the best commercial practice to insure safe arrival at the University delivery point.

20. **Quantity.** With respect to quantity of any good purchased under the Agreement, Owner need not accept any variation in quantity except as specified in the Contract Documents. Over-shipments may be returned to Vendor at its expense, which shall include a reasonable cost for Owner handling, or be retained by Owner at no increase in price.

21. **Inspection.** Owner may, at any time in the course of the Agreement, inspect and test materials and supplies being used in the performance of the Agreement, including at the point of manufacture. If inspection and tests are made on Vendor's premises, Vendor without additional charge, shall provide reasonable facilities and assistance for the safety and convenience of the testing/inspection personnel. Except as otherwise agreed in writing, all goods, equipment and supplies furnished under the Agreement shall be subject to final inspection and acceptance by Owner at the delivery destination.

22. **Defective Goods or Work.** Owner, notwithstanding any prior acceptance, at its option, may reject or require prompt correction (in place or elsewhere) of any goods, equipment, supplies, or other work, which are defective in material or workmanship or otherwise fail to meet the requirements of the Agreement. All supplies furnished under the Agreement shall be subject to inspection at F.O.B. destination, and Vendor shall be given notice of any defects, other than latent defects, within a reasonable time after receipt of the goods, equipment, and supplies, along with all records of delivery. Owner may, in addition to any rights it may have by law, prepare for shipment and ship the defective goods, equipment, and supplies to Vendor, require Vendor to remove them, or direct a correction in place. The expense of any such remedy shall be borne by Vendor, including any excess cost.

23. **Liens.** Vendor warrants that it has title to any goods delivered under the Agreement and shall deliver same free of all liens, claims, and encumbrances.

24. **Federal, State and Local Sales Taxes; Federal Excise Taxes.** Purchases made by the University of Nebraska are exempt from the payment of State Sales and Use Taxes and Federal Excise Taxes. Certification of these exemptions will be provided to Vendor following the execution of the contract documents.

25. **Ambiguities.** Should Vendor perceive an ambiguity in the Contract Documents, Vendor shall request an interpretation from Owner before proceeding. If Vendor fails to make such a request, failure to perform with respect to the alleged ambiguity shall not be excused.

26. **Recycling Policy.** When purchasing products, materials, or supplies for use, Owner, when making such purchases shall actively pursue the purchase of products, materials, or supplies which are manufactured or produced with at least 10% post-consumer recycled materials. This policy shall not operate when it would result in the purchase of products, materials, or supplies that are of inadequate quality, not readily available or substantially higher in cost. It is the intent of Owner to continually increase the percentage produced from post-consumer recycled material, and, to increase each year the types and variety of products, materials, or supplies purchased with post-consumer recycled material.

27. **Vendor Identification.** Vendor shall cause each of its employees or any person acting on behalf of the Vendor, while providing goods/services to Owner under this Agreement and working on Owner's property, to carry identification, with photo, showing that the

individual is an employee or person acting on behalf of the Vendor. A badge worn outside of clothing is appropriate for this purpose. Such identification shall be produced upon request of any Owner representative, in order to confirm that the Vendor's representative is authorized to be present on Owner's property and/or performing as authorized by the Agreement. Whereas campus security is of utmost importance, failure of any Vendor representative to produce the requisite identification upon request, shall be a material breach of the Agreement and shall be cause, at the discretion of Owner, for immediate termination of the Agreement. For those who commonly wear a work uniform, such uniform shall be worn while providing the services related to this Agreement in order that Owner may quickly and clearly identify Vendor's service representatives when necessary. A uniform, however, does not take the place of a photo identification badge.

28. **Legal Relationship.** Vendor shall under no circumstances be considered as an agent or employee of Owner and shall have no right or authority to, in any manner, obligate Owner to any person or company except as authorized in writing by Owner.

29. **Logos or University Marks**. Vendor shall not use or display any University name, logo, trademark, service mark (individually a "Mark" and collectively the "Marks") and/or other indicia designated by University as a source identifier, unless expressly authorized in writing by University. Any unauthorized use of Marks is expressly prohibited. Vendor shall not use University's name in any manner that acts as an endorsement or is an appearance of any endorsement in any promotion, advertisement, solicitation, or other communication, especially as it relates to Vendor's business.

30. **Improper Business Relationships and Conflict of Interest Prohibited.** In connection with this Agreement, Vendor shall ensure that no improper, unethical, or illegal relationships, or conflict of interest exists between or among Vendor, the University and any staff and faculty, and any other party to this Agreement. Owner reserves the right to determine the materiality of such relationships, when discovered or disclosed, whether intended or not; and to decide whether or not cancellation of award shall result. Such cancellation shall be at no fault or liability whatsoever to Owner.

31. **Electronic and Information Technology Accessibility**. All electronic and information technology procurements, agreements, and contracts shall comply with Americans with Disabilities, Section 508 or the Rehabilitation Act of 1998 as amended and the Nebraska Accessibility Policy to be found at: https://nitc.nebraska.gov/standards/2-Chapter.pdf.

32. **Work Status Verification.** Vendor, on behalf of itself and any sub-vendor to the Agreement, agrees that it shall use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska pursuant to Neb. Rev. Stat. 4-108 to 4-114 as amended.

33. **Vendor's Certificate of Insurance.** Vendor will be required to furnish a certificate of insurance with bodily injury/personal injury/liability coverage, property damage liability coverage, and workman's compensation coverage. This certificate must be on file prior to any commencement of Work. It is necessary that the "Board of Regents of the University of Nebraska is listed as an additional insured" be added to the face of the certificate for all coverage except worker's compensation and professional liability (if required). The above statement must be worded in this manner. It is also necessary that a "Completed Operations Coverage" must be included as part of Vendor's General Liability.

34. **Debarment.** Vendor certifies and warrants that it has not been debarred, suspended, or declared ineligible as defined in the Federal Acquisition Regulation 48 CFR Ch.1 Subpart 9.4. Vendor also certifies that Vendor, its partners, directors, officers, employees, licensees, subcontractors, or agents have not been excluded or debarred or otherwise become ineligible to participate in federal health care programs pursuant to 42 USC § 1320a-7. The certification and warranty set forth in this section shall be an ongoing certification and warranty during the Term, and Vendor shall immediately notify University of any change in the status of the certification and warranty set forth in this section. If Vendor becomes excluded from federal health care program participation or placed on the Consolidated List of Debarred, Suspended, and Ineligible Contractors, this Agreement may be terminated immediately, for cause, by University. If any partners, directors, officers, employees, licensees, subcontractors, personnel, or agents of Vendor become excluded from federal health care program participation, such individual shall be removed from participating in this Agreement immediately. Failure by Vendor to remove such excluded individual immediately shall provide University the right to terminate this Agreement immediately for cause.

35. **Federal Funding Compliance.** If this Agreement involves federal funds, (a) Vendor's compliance in all respects with all applicable federal anti-discrimination laws is material to Vendor's performance under this Agreement; (b) Vendor certifies that it does not operate any programs promoting diversity, equity, and inclusion that violate such laws; and (c) Vendor's failure to comply with such laws shall be considered a material breach of this Agreement.

    If this Agreement is for $15,000 or more and involves federal funds, then Vendor shall comply with 41 CFR §§ 60-300.5(a) and 60-741.5(a), which are incorporated herein by this reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and action to employ and advance in employment individuals without regard to disability or veteran status.

    If Vendor has fifty (50) or more employees and this Agreement involves payment of $50,000 or more in federal funds to Vendor, then Vendor shall develop or maintain a program as described in 41 CFR 60-741, subpart C. If Vendor has fifty (50) or more employees and this Agreement involves payment of $150,000 or more in federal funds to Vendor, then Vendor shall develop or maintain a program as

described in 41 CFR 60-300, subpart C. To the extent any of the provisions of Appendix II to 2 CFR Part 200 apply to this Agreement, such provisions are incorporated herein by this reference and apply to Vendor as a "contractor," "recipient," or "subrecipient."

36. **Taxpayer Transparency Act**. Under Neb. Rev. Stat. §§ 84-602.01 to 84-602.04, University is required to provide the Nebraska Department of Administrative Services with a copy of each contract that is a basis for an expenditure of state funds, including any amendments and documents incorporated by reference in the contract. Copies of all such contracts and documents will be published by the Nebraska Department of Administrative Services at https://statecontracts.nebraska.gov/. It shall be the sole responsibility of Vendor (a) to notify University of any requested redactions to this Agreement, any amendment to this Agreement, and any document incorporated by reference into this Agreement and (b) to indicate the legal basis for such requested redactions at the time of execution thereof. In addition, Vendor shall defend any challenge to such redactions at its own expense. Vendor's failure to request redactions to any contracts or documents released by University under this section shall constitute a complete waiver of any and all claims for damages caused by any such release.

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Rev 04/2026