

The following Terms and Conditions apply to all University of Dayton (“University”) Vendor Agreements, in addition to any terms set forth on the face of an individual purchase order or in any plans, specifications or other documents incorporated by reference. By signing, it is understood that the Terms and Conditions shall prevail notwithstanding any additional, different or conflicting terms contained in any purchase order, plan, specification, or incorporated document. In the event of any conflict or inconsistency between the provisions of the Vendor’s Contract and the provisions of these Terms and Conditions, the provisions of these Terms and Conditions shall, in all respects, govern and control.

The “University of Dayton” and “University” as used in this agreement mean the University of Dayton and all of its members, officers, trustees, employees, volunteers and agents. The term “Vendor” includes but is not limited to contractors, or consultants who conduct work or services on University premises or who represent the University at off-campus locations. The use of any sub-contractor(s) in fulfilling the awarded project must be approved by the University. Any and all of Vendor’s sub-contractor(s) or Vendor’s Independent Contractors are subject to the terms of this Agreement.

1. VENDOR STATUS

Vendor is acting as an independent vendor/contractor. Vendor is not an employee, agent, partner, or joint venture, of the University of Dayton and does not have the right or ability to bind the University of Dayton to any agreement with a third party or to incur any obligation or liability on behalf of the University. Vendor agrees to perform and discharge all obligations in connection with the services as an independent contractor and for all purposes including but not limited to federal and state social security laws, employee compensation and unemployment insurance and contributions, taxes, and public liability insurance requirements.

2. TERM

These terms and conditions shall commence on the effective date and continue for one calendar year. These terms and conditions must be renewed annually for Vendor to continue to work on University projects.

3. SUBJECT TO UNIVERSITY POLICIES

Vendor is subject to University policies and procedures. Vendor agrees to familiarize itself with applicable policies, such as policies and protocols on confidentiality, conflict of interest, nondiscrimination, etc., as well as those policies that may pertain to the scope of Vendor’s work. Such University policies and procedures, as they may exist from time to time, including the compliance requirements set forth in them, are incorporated herein by reference.

4. ALCOHOL, TOBACCO AND DRUGS

If the Vendor and/or its employees or agents arrive at the event site under the influence of drugs or alcohol, or any such individual’s smoke outside the university’s designated smoking areas, the University of Dayton reserves the right to cancel the agreement/contract and

FACILITIES MANAGEMENT & CONDITIONS (continued)

recover from Vendor all sums already paid under the contract.

5. CONTROL OF PERFORMANCE AND DAMAGES

The Vendor will control the details and manner of service. Notwithstanding this control by Vendor, the University of Dayton may stop work deemed to be in violation of state or federal law or applicable ordinances. Damages to the premises, equipment or properties of the University of Dayton caused by the Vendor or its staff, either intentionally or through negligence, will be paid for by the Vendor and may be deducted by the University from the contracted fee.

6. BACKGROUND CHECKS

Vendor certifies that all employees, subcontractors, or volunteers who will work on the University premises or on a University project have successfully passed a background check that meets or exceeds the University's standards for the type of work being performed as specified in University policy (<http://www.udayton.edu/policies/legalaffairs/background-check-policy.php>). Specifically, the background check must include a criminal history check and sex and violent offender registry check as defined in the above mentioned policy. A successful background check must return no criminal convictions or incidents that bear a demonstrable relationship to successful performance of the work service being performed. Failure to successfully pass a sex and violent offender registry check will result in an automatic disqualification.

All individuals, including the employees and subcontractors of any Vendor engaged by Vendor, are required to self-disclose disqualifying criminal arrests and/or convictions within a 72 hour period of their occurrence. The University of Dayton has the right to audit Vendor's Background Check process at any time, which may require review of background screening records. Upon the University's request, Vendor shall provide University with proper verification of a successful background check

If Vendor knowingly and/or intentionally falsifies or fails to report information or background status on a contract worker or subcontractor working on or for the University, the University reserves the right to immediately remove the worker in question from the premises or project; to cancel the agreement or contract with the VENDOR; and/or to permanently bar Vendor from conducting further business with the University.

If Vendor, acting in good faith, errs in reporting the correct background status of an employee or subcontractor working on University premises, Vendor shall, as soon as practicable upon discovery of the error, notify the Hiring Manager of the employee's correct status. Vendor shall then take immediate corrective action which may include removing the individual from University premises and replacing the person with a qualified individual.

If Vendor cannot comply with this section, Vendor must contact the University representative for alternatives before commencing work on the University premises, to determine how compliance can be established. All screening required to comply with this section shall be at Vendor's expense and shall not be reimbursable by the University unless agreed otherwise in writing.

FACILITIES MANAGEMENT & CONDITIONS (continued)

7. INDEMNIFICATION

Vendor shall defend, indemnify, protect, and hold harmless and reimburse the University, its members, trustees, officers, agents, representatives, employees and students from and against any and all claims, demands, actions, suits, damages, liabilities, costs, and expenses, including reasonable attorney's fees and disbursements arising out of or in connection with any injury to, damage to, death to or loss of any persons or property, or breach of any of Vendor's representations, warranties or obligations or any violation of any applicable laws or regulations resulting from or in connection with the sale, transportation, installation, use, or repair of Vendor Goods or Services. This Indemnification Section shall survive the termination of these Terms and Conditions.

8. CONFIDENTIALITY

Vendor, including its employees and agents, shall hold and deal with the following in confidence: (a) information relating to a student and/or any education records of a student; (b) any programs or service(s) of the University that have not yet been made public by the University; (c) all information and reports that may be generated for or by the University pursuant to Vendor's services; (d) proprietary methodologies, techniques and tools of the University; and (e) any other information or materials that are designated as "confidential" or should be reasonably known by the Vendor to be confidential. Confidential information does not include information that is (f) approved for release or disclosure without restriction by the University in writing; (g) publicly known or becomes publicly known, so long as it is not through the acts or omission of the Vendor that it is or becomes publicly known; (h) rightfully received by the Vendor from a third party without restriction and without violation of any agreement; or (i) legally required to be disclosed by the Vendor in response to a requirement of a governmental agency or court of law having jurisdiction, in which case the Vendor will provide the University prompt notice prior to disclose so that the University may seek judicial protection or otherwise limit disclosure, if the University so desires. The Vendor shall protect the University's Confidential Information that is in the Vendor's possession or control using at least the same means it uses to protect its own confidential information, but in any event not less than reasonable means.

9. STANDARD OF BEHAVIOR

Vendor agrees to recognize and act in accordance with the Catholic and Marianist standards of honesty, dignity, and respect. Vendor agrees not to engage in any conduct in violation of any state or federal statute, regulation or ordinance, conduct involving moral turpitude; conduct in violation of the University's Policy Prohibiting Illegal, Fraudulent, Dishonest, and Unethical Conduct; or any other conduct that is inconsistent with, embarrassing to or destructive to the University's identity as a Catholic and Marianist institution.

10. INSURANCE

- a) Throughout the term of these Terms and Conditions and for two (2) years following, the Vendor shall maintain, at Vendor's expense, Commercial General Liability Insurance with respect to claims for bodily injury, personal injury, advertising injury and property damage arising out of Vendor's services and operations, goods and products and

FACILITIES MANAGEMENT & CONDITIONS (continued)

completed operations in an amount not less than One Million Dollars (\$1,000,000) per occurrence, and not less than Two Million Dollars (\$2,000,000) in the aggregate.

- b) The Vendor shall also maintain throughout the term of this agreement Automobile Liability for owned, leased vehicles in an amount no less than \$1,000,000 per occurrence.
- c) Vendor shall maintain Workers' Compensation, for the duration of these Terms and Conditions, consistent with the requirements of the State of Ohio. The Vendor's workers compensation policy shall be amended to include a Waiver of Subrogation against the University of Dayton.

The Vendor shall also maintain through the term of this agreement Employers' Liability (aka Stop Gap Liability) in an amount of not less than \$1,000,000 per occurrence.
- d) The Vendor shall also maintain an Umbrella or Excess Liability policy with at least Two Million Dollars (\$2,000,000) occurrence and Two Million Dollars (\$2,000,000) aggregate limit. The Umbrella or Excess Liability policy shall be inclusive of General Liability, Automobile Liability and Employers' Liability. The limit expressed herein is not intended to limit Vendor's liability to the amount of such coverage limits.
- e) The Commercial General Liability shall include the following as Additional Insured: University of Dayton, its affiliates and subsidiaries, members, officers, employees, volunteers, Coverage provided shall be primary to the Additional Insured's and not contributing with any other insurance or similar protection available to the Additional Insured's whether other available coverage be primary, contributing or excess. The above policies and Certificate of Insurance shall also provide for a thirty [30] day notice of cancellation or non-renewal to this certificate holder. A certificate evidencing such coverage shall be forwarded to:

Attn: Robin Oldfield
Environmental Health & Safety/Risk Management,
300 College Park, Dayton, Ohio 45469-2905,
Fax (937) 229.4395.
- f) If applicable, Vendor shall, in addition to the above requirements, maintain throughout the term of this Terms and Conditions and two (2) years following, professional liability insurance for claims arising from real or alleged errors, omissions, or negligent acts committed in the performance of professional or technical services associated with these Terms and Conditions with limits of at least \$1,000,000 per claim and \$2,000,000 in the aggregate. The limit expressed herein is not intended to limit the Vendor's liability to the amount of such coverage limits.
- g) University reserves the right to require other insurance requirements depending on the nature of the service or goods.

11. UNIVERSITY NAME AND LOGO

Vendor shall not use or register the name "University of Dayton" alone or as part of another name or any logos, seals, insignia or other words, names, symbols or devices that identify University of Dayton or any University of Dayton school, division or affiliate for any purpose except with the prior written approval of, and in accordance with any restrictions required by

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the University of Dayton. Any approved use must be consistent with the University's brand guidelines available at <https://www.udayton.edu/brand/>.

12. FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

Vendor warrants that it will not make available or distribute any education records it receives from the University of Dayton in violation of the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g "FERPA". Vendor agrees to limit access to records provided by the University of Dayton to its employees with a legitimate need to know in order for Vendor to fulfill its obligations under these Terms and Conditions. For purposes of its FERPA Policy, University designates Vendor as a "School Official".

13. DATA SECURITY

Vendor warrants that it has procedures in place to prevent unauthorized access to data provided by the University of Dayton, and the procedures will be documented and available to the University of Dayton upon request. Vendor will notify the University of Dayton immediately in the event of a security breach that could or does impact the University of Dayton records or data. Vendor will conduct an investigation as soon as practical, but no more than ten (10) business days from the data security breach first being identified. This notice should include details of the breach and steps to resolve the breach. Vendor agrees that the University of Dayton data will not be shared or sold to third parties without prior written authorization from the University of Dayton.

14. EQUAL OPPORTUNITY

In connection with the furnishing of any goods or services to the University of Dayton, Vendor agrees not to discriminate against any recipients of services or employees or applicants for employment on the basis of race, color, national origin, ancestry, religion, sex, sexual orientation, gender identity, gender expression, age, genetic information, disability, or protected veteran status. Vendor shall comply with federal laws, rules and regulations applicable to subcontractors of government contracts including those relating to equal employment of minorities, women, persons with disabilities and veterans.

The undersigned has carefully read and understand the terms and conditions of this Terms and Conditions and has the authority to bind the Vendor.

University of Dayton:

Vendor:

Signature:

Signature:

Print name:

Print name:

Title:

Title:

Date:

Date:

Date

Signature