

Kent County Terms and Conditions

By filling this Purchase Order or Master Agreement (hereinafter "Purchase Order"), Vendor agrees to the following:

Goods and Services: All goods, supplies, products, and other tangible items Vendor provides to the County shall be considered "Goods." All services, tasks, and actions Vendor performs and/or provides to the County shall be considered "Services." Vendor is solely responsible for all necessary labor, materials, tools, equipment, planning, supervision, services, and costs to provide the Goods and/or perform the Services (collectively referred to hereinafter as the "Work").

Delivery and Billing: Time is of the essence in Vendor's performance of its obligations. If the Work is not delivered by the delivery date on the front of this Purchase Order, Vendor is in default of the Agreed Terms and the County is entitled to all available remedies at law or in equity. Unless the County otherwise agrees in writing, Vendor must submit invoice(s) within sixty days of the provision of Work. Invoices that are not timely submitted may be rejected.

Subcontractors: Any subcontractors, associates, or consultants Vendor requires for the Work covered by the Agreed Terms are limited to individuals or firms the County specifically authorizes in writing. All Vendor personnel performing Work on County property shall be clearly identifiable. Substitutions or additions to subcontractors, associates, or consultants is subject to the County's prior written approval. All subcontractors, associates, or consultants are subject to the Agreed Terms and directly responsible to Vendor.

Officials Not to Benefit: No Kent County Board of Commissioners member or municipal official shall receive any share of the Agreed Terms or benefit that may arise therefrom except as otherwise provided for in the Agreed Terms.

Right to Supply/Perform Work: Vendor expressly warrants that the provided Goods and/or Services and established Vendor duties do not violate any other agreement Vendor is a party of or bound by. Vendor shall indemnify and hold the County harmless from and against any liability arising out of any breach or claimed breach of this warranty.

Warranties and Remedies: Vendor expressly warrants that: (a) all Goods provided to the County: (i) are merchantable in the trade as goods strictly of the kind and quality the Purchase Order requires Vendor to furnish; (ii) are new, unused (unless refurbished Goods are specifically ordered), good quality, and free from latent and patent defects in design, material, manufacture and workmanship; (iii) are the quality, size, dimension, and specifications the County ordered; (iv) are not restricted by patents, copyrights, trade secrets, security interest, lien, other encumbrances, and/or third-party rights affecting the County's use; (v) have been properly stored, labeled, handled, and shipped; (vi) are safe for use and comply with all Applicable Law; (vii) strictly meet the Purchase Order's requirements; and (viii) are fit for the particular purpose County intends to use the Goods for; and (b) all Services performed for the County: (i) are performed in a workmanlike manner; (ii) are performed by Vendor's employees, subcontractors, and agents; (iii) are performed by persons with the necessary skills, experience, registrations, licenses, certifications, and qualifications required to perform the Services; (iv) and strictly meet the County's requirements and expectations. If the County determines the Goods or Services do not conform with Vendor's warranties, upon receipt of the County's written notice of such nonconformity and at no cost to the County, Vendor shall repair the Goods and/or reperform the Services to conform with Vendor's representations or replace them with conforming Goods and/or Services. In lieu of repair or replacement, the County, at its option and not in limitation of any other right or remedy available, may: (i) reject the nonconforming Goods; (ii) revoke acceptance of nonconforming Goods after discovering the nonconformance; (iii) reject the Services; and (iv) require Vendor to refund the Total Purchase Order Amount (in whole or part) for any Goods and/or Services for which a breach of warranty exists and remove nonconforming items. Vendor is liable for all amounts, liabilities, and/or damages the County incurred and sustained resulting from any breach of warranty, including but not limited to the removal, replacement, repair, shipping, receiving, storage, and reinstallation costs and all other incidental and consequential damages. Vendor's warranties and related obligations survive final payment and acceptance of the Goods and/or Services and termination of the Agreed Terms. If any warranty of a supplier or manufacturer other than Vendor covers the Goods or Services supplied, Vendor agrees said warranties shall be transferred to the County. If said warranties are not transferable, Vendor shall notify the County immediately and the County shall, at its option, be excused from performance under the Agreed Terms.

Intellectual Documentation and Products: Unless otherwise specified, all project documentation and final work product(s) developed for the County are the County's sole property. All generic ideas, concepts, processes, systems, or methodologies, including computer hardware or software applications Vendor developed to achieve the agreed goals that are not specific project deliverables remain Vendor's intellectual property. A complete set of all documentation Vendor developed under the Agreed Terms shall be made available to County upon County's request without charge and shall become the County's sole property.

Indemnity: Vendor shall indemnify and hold harmless the County, its officials, officers, agents, employees, and assigns from and against all claims, judgments, losses, damages, demands, payments, recoveries, legal proceedings, orders, and decrees, including attorney fees, of third persons or Vendor's employees, arising or resulting from Vendor's performance or non-performance under the Agreed Terms. Such indemnification will extend to County's infringing use of a product or service Vendor offered under the Agreed Terms when that product or service infringes on a third party's intellectual property. The forgoing indemnification obligations shall: (i) not be affected or limited by any insurance Vendor required and (ii) survive the Agreed Terms' termination and expiration.

Limitation of Liability: In no event shall the County, or any respective County director, board member, officer, employee, agent, successor, and assign, be liable to Vendor or anyone claiming through or related to Vendor, whether based on the Agreed Terms, tort, negligence, warranty, indemnity, strict liability, delay, error, omission, or otherwise, for any consequential, special, incidental, indirect, punitive, exemplary, or multiple damage or damages arising from or connected to loss of use, revenue, or profit, actual or anticipated, increased expense of manufacturing or operation, or cost of capitals. Vendor releases the County, and any respective County director, officer, board member, employee, agent, successor, and assign from such liability. The County's total liability to Vendor shall not exceed the Total Purchase Order Amount. All claims and causes of action resulting from any alleged breach against the County must be commenced within two years of the Purchase Order's date or Vendor will have deemed to irrevocably waive such claims and causes of action.

Risk of Loss: The risk of loss of any Goods sold to the County under the Agreed Terms shall pass from Vendor to the County when the County takes possession of the Goods.

Anticipatory Breach: If Vendor declares its intent not to perform in accordance with the Agreed Terms before delivery of Work, the County has an immediate cause of action for breach of the Agreed Terms and is entitled to all available remedies at law or in equity.

Termination: If Vendor has not performed or unsatisfactorily performed its obligations required by the Agreed Terms, payment may be withheld in the County's sole and absolute discretion. Vendor's failure to fulfill its obligations shall constitute just cause for terminating the

Agreed Terms and Vendor shall only be entitled to recover any undisputed costs Vendor incurred up to the termination date. Vendor waives all claims for costs resulting from termination, including but not limited to consequential damages, lost profits, demobilization costs, and termination costs. The County may terminate the Agreed Terms without cause upon providing Vendor thirty days' written notice of termination. In such termination, the County shall pay Vendor, as Vendor's sole and exclusive remedy, a termination payment comprised of any amounts due for Work the County accepted before the termination date. In no event is Vendor entitled to any payment or profit for any Work the County did not accept, nor any consequential damages arising from the termination.

Governmental Immunity: The County does not waive its governmental immunity by entering the Agreed Terms, and fully retains all immunities and defenses provided by law with respect to any action based upon or occurring from the Agreed Terms.

Insurance: Vendor shall procure and maintain insurance that complies with County of Kent Insurance Requirements (https://www.accesskent.com/Departments/Purchasing/pdfs/KC_InsuranceRequirements.pdf). All applicable County of Kent Insurance Requirements provisions are incorporated herein by reference with the same force and effect as though fully set forth herein.

Compliance Laws: Vendor shall not discriminate against any employee or employment applicant with respect to hire, tenure, terms, conditions, privileges of or a matter related to employment due to race, color, religion, national origin, age, sex, height, weight, marital status, or disability unrelated to the individual's ability to perform a particular job or position. Vendor's breach of this section within the State of Michigan shall constitute a material breach of the Agreed Terms and allow the County to terminate the Agreed Terms. Pursuant to MCL §423.321 *et seq.*, which prohibits the County from entering contracts with employers who engage in unfair labor practices, the Agreed Terms may be terminated if Vendor, or any of its subcontractors or suppliers, appears in the register compiled under MCL §423.322. Vendor must observe and comply with the Elliott-Larsen Civil Rights Act and all applicable federal, state, and local laws, ordinances, rules, and regulations, specifically including but not limited to State of Michigan Emergency Rules, Orders, and Directives.

Safety: Vendor shall comply with all federal, state, and local laws, ordinances, rules, and regulations that affect the safety of those employed on and in the conduct of the Work and the safety of equipment or material provided or used under the Agreed Terms. Vendor shall indemnify and hold the County harmless against any claim or liability arising from the violation of any such provisions.

Cumulative Remedies: All remedies in the Agreed Terms are cumulative and in addition to all other rights and remedies the parties may have at law or in equity that are expressly reserved.

Entire Agreement: These Terms and Conditions, together with the Purchase Order including affixed exhibits, proposals, specifications, drawings, schedules, statements of work, quotes, and other information physically attached, constitute the entire agreement between the parties (the "Agreed Terms"). The order of the documents listed in the preceding sentence shall govern in the event of inconsistencies between documents. Any prior understanding, representation, or negotiation preceding the Purchase Order date are non-binding upon either party except to the extent incorporated in the Agreed Terms. Before entering the Agreed Terms, Vendor warrants it has: (i) carefully reviewed all areas where the Work is to be performed; (ii) considered all conditions affecting or relating to the Goods and/or Services; and (iii) concluded it can deliver the Goods and perform the Services within the County's specified time. Vendor waives all claims for conditions which it should or could have reasonably been aware of at the time the Purchase Order was issued. No oral agreements, representations, course of conduct, dealings, or usage of trade are relevant to supplement, explain, contradict, or vary any provision contained herein or any express or implied warranties of Vendor.

Terms and Conditions Control: Vendor is deemed to accept these Terms and Conditions upon filling the Purchase Order. Vendor's acceptance is limited to the offer's express terms. The County objects and rejects any quote, proposal, and/or documentation Vendor provides with additional or different terms from the Agreed Terms.

Modification: Pursuant to MCL §440.2207, no attempt to modify these Terms and Conditions, the Kent County solicitation, or additional obligations under the Agreed Terms is binding absent agreement on such modification in writing and signed by the County. Any modification of the Agreed Terms or additional obligation assumed by either party shall be binding only if evidenced in a writing signed by Vendor and an authorized representative of the County.

Partial Invalidity: The partial invalidity of any portion of the Agreed Terms does not affect the validity of any other provisions. If an Agreed Terms provision is held to be invalid, the parties agree that the remaining provisions remain in full force and effect as if they had been executed by both parties after the invalid provision's expunction.

Absence of Waiver: The County's failure to enforce or require strict compliance with the Agreed Terms shall not constitute a waiver of Vendor's breach or the County's right to pursue available remedies for breach. No waiver shall be effective unless in writing and signed by the County.

Notices: All notices required shall be sent certified mail/return receipt requested or via facsimile and email to Vendor Information listed on the Purchase Order. Notice to the County shall be sent to the Purchasing Manager's attention.

Assignment: Each party's rights and obligations under the Agreed Terms are personal to that party and cannot be assigned or transferred to another person, firm, corporation, or entity without the other party's prior, express, and written consent. In the event of a proper assignment, the Agreed Terms shall be binding upon and inure to the benefit of the parties' successors and assigns.

No Third-Party Benefit: The Agreed Terms' provisions are for these parties' benefit and not for any other person or legal entity's benefit.

Consent to Personal Jurisdiction: Vendor acknowledges that the Agreed Terms are deemed to be executed in the State of Michigan and hereby consents to the exercise of general personal jurisdiction by the appropriate State of Michigan courts. Any action on a controversy arising under the Agreed Terms shall be brought in the State of Michigan, which Vendor agrees is a reasonably convenient place for trial. Vendor agrees its consent is not obtained by misrepresentation, duress, the abuse of economic power, or other unconscionable means.

Federal Excluded Parties List: Vendor acknowledges that the County may be receiving funds from or through the Federal Government. These funds may not be used to pay any vendor on the Federal Excluded Parties List (EPLS). Vendor represents and warrants that it is not on the EPLS. If Vendor is not in compliance during execution, term, or extension(s) of the Agreed Terms, Vendor shall be in breach and the County is entitled to all available remedies at law or in equity, including but not limited to recovery of all moneys paid to Vendor, consequential damages (including the loss or return of grant funding), and attorneys' fees (including in-house counsel costs) resulting from Vendor's non-compliance. Vendor certifies, under civil penalty for false certification, it is fully eligible under law and that it is not an "Iran linked business" pursuant to the Michigan Iran Economic Sanctions Act, 2012 P.A. 517.

Revised 5/8/2024