I. The contractor certifies that it understands and agrees that the following terms and conditions (collectively the "University’s Standard Terms and Conditions") are incorporated into the contract awarded by the University to the contractor.

II. In the event the terms and conditions within the contractor’s proposal conflict with the University’s Standard Terms and Conditions, the University’s Standard Terms and Conditions will govern.

III. The contractor’s status pursuant to the contract shall be that of an independent contractor and not an employee of the University.

1. LAWS REQUIRING MANDATORY COMPLIANCE BY ALL UNIVERSITY CONTRACTORS

1.1 BUSINESS REGISTRATION (Contracts in excess of $5,160)

a. With the exception of not-for-profit and public entities, all New Jersey and out of State business entities must obtain a Business Registration Certificate (BRC) from the Department of the Treasury, Division of Revenue before conducting business in the State of New Jersey and prior to the University’s execution of a contract with the contractor pursuant to N.J.S.A. 52:32-44(c). The contractor must provide proof of a valid and current business registration with the Division of Revenue to the University’s Procurement Services Department before starting work under the contract. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG can be filed online at www.state.nj.us/njbgs/services/html. Contractor’s failure to comply may result in the imposition of penalties by the University in accordance with all applicable laws.

b. All sub-contractors of the contractor must provide the contractor with a copy of a current and valid Business Registration Certificate. The contractor must forward the Business Registration Certificates of all subcontractors to the University’s Procurement Services Department prior to any subcontractor starting work under the contract.

1.2 ANTI-DISCRIMINATION – With the exception of contractors who are public entities, the contractor agrees not to discriminate in employment and agrees to abide by all anti-discrimination laws including those contained within Executive Order 61, N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A.10:5-1 et seq. and N.J.S.A.10:5-31 through 10:5-38, and all rules and regulations issued there under. Contractor agrees to the mandatory EEO/AA language for goods and services and professional services contracts, or construction contracts awarded by a public agency, as applicable, as more fully set forth in N.J.A.C. 17:27-3.5 and 3.7 or N.J.A.C. 17:27-3.6 and 3.8 respectively, which are incorporated by reference as if fully restated herein. These terms can be found on the University’s website at https://www.montclair.edu/procurement/wp-content/uploads/sites/159/2020/09/Form-AA302-Affirmative-Action-Language-8-31-20-
1.3 PREVAILING WAGE ACT - The New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.26 et seq. is hereby made part of every contract entered into by the University, except those contracts which are not subject to the Act. The contractor agrees to comply with all applicable provisions of the Act and its implementing regulations. The contractor also guarantees that neither it nor any subcontractor it might employ to perform the work has been suspended or debarred by the Commissioner, Department of Labor.

1.4 AMERICANS WITH DISABILITIES ACT - The contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101 et seq. 1.4. Accessibility of online content and functionality will be measured according to the W3C’s Web Content Accessibility Guidelines 2.0 Level AA (“Benchmarks for Accessibility”). Contractor shall ensure that content and functionality provided by contractor via the University’s website or subordinated webpages meet the Benchmarks for Accessibility or that equally effective alternate access can be provided by contractor that ensures, to the maximum extent possible, individuals with disabilities receive the same benefits and services as their nondisabled peers.

1.5 THE WORKER AND COMMUNITY RIGHT TO KNOW ACT - The provisions of N.J.S.A. 34:5A-1 et seq. which requires the labeling of all containers of hazardous substances are applicable to the contract. Therefore, all goods offered for purchase to the University must be labeled by the contractor in compliance with the provisions of the Act.

1.6 OWNERSHIP DISCLOSURE – In the event contractor is a corporation, partnership, or limited liability company, as a condition precedent to the contract, contractor shall comply with the provisions of N.J.S.A. 52:25-24.2. Contractor shall provide the University statement setting forth the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class, or of all individual partners in the partnership who own a 10 percent or greater interest therein, or of all members in the limited liability company who own a 10 percent or greater interest therein, as the case may be. If one or more such stockholder or partner or member is itself a corporation or partnership or limited liability company, the stockholders holding 10 percent or more of that corporation's stock, or the individual partners owning 10 percent or greater interest in that partnership, or the members owning 10 percent or greater interest in that limited liability company, as the case may be, shall also be listed. The disclosure shall be continued until names and addresses of every noncorporate stockholder, and individual partner, and member, exceeding the 10 percent ownership criteria established in this act, has been listed. Contractor shall use the University’s Ownership Disclosure Form.

If the owners of contractor are a direct or indirect parent entity which is publicly traded, contractor may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the
foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest. In the event contractor’s disclosure reveals that the ownership interest prevent the University from entering into a contract with the contractor, the contract shall be null and void, the University shall have no payment obligation, and the contractor shall return any funds received from the University.

1.7 COMPLIANCE - LAWS - The contractor must comply with all local, state and federal laws, rules and regulations applicable to the contract and to the goods delivered and/or services performed under the contract.

1.8 COMPLIANCE WITH N.J.S.A. 19:44A-20.13 et seq. (“Pay to Play” Act). If the total amount of the contract is or will be in excess of $17,500 but excluding not-for-profit and public entities, as a condition precedent to the contract, contractor shall complete and return a Political Contribution Disclosure Form to Procurement Services. Failure to comply with this political contribution disclosure requirement may result in the cancellation of the contract award and/or imposition of financial penalties by the New Jersey Election Law Enforcement Commission (“ELEC”). The Procurement Services Department will forward the completed Form to the State Treasurer or his designee for review pursuant to the Act. In the event the State Treasurer determines that the Act precludes a contract award to the contractor, the contract shall be null and void ab initio.

If the total amount of the contract is or will exceed $50,000, the contractor is under a continuing duty to disclose all contributions that may be made during the term of the contract. In such event, the contractor must immediately complete the Continuing Disclosure of Political Contributions Form and submit the completed Form to the University’s Procurement Services Department. All forms and instructions are available from the University’s Procurement Services Department. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at http://www.elec.state.nj.us/.

1.11. SET-OFF FOR STATE TAXES AND CHILD SUPPORT- Pursuant to N.J.S.A. 54:49-19, if the contractor is entitled to payment under the contract at the same time as it is indebted for any State tax (or is otherwise indebted to the State) or child support, the University, in coordination with the State Treasurer, may set off that payment by the amount of the indebtedness.

1.12. FEDERALLY FUNDED CONTRACTS – If the contractor will be paid by the University using federal funds, contractor and its subcontractor shall abide by the requirements of the Civil Rights Act of 1964, 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these
regulations require that prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status. To the extent applicable, Contractor shall also comply with the Rider for Purchases Funded, in Whole or Part, by Federal Funds which is incorporated by reference as if fully restated herein and can be found on the University’s Procurement webpage at: https://www.montclair.edu/procurement/forms/. To the extent applicable to the contract, contractor shall also comply with the University’s Policy and Procedures on Financial Conflict of Interest which can be found at: https://www.montclair.edu/sponsored-programs/wp-content/uploads/sites/194/2019/02/2017-Revised-FCOI_FINAL_5_15_2017_web.pdf

1.13. IRAN INVESTMENT DISCLOSURE - As a condition precedent to the contract, the contractor (including those that are public entities), shall complete and submit to Procurement Services a Disclosure of Investment Activities in Iran Certification. Contractors that submit a false certification, or fail to cease investment activities in Iran, may require termination of the contract and subject the contractor to civil and criminal penalties by the State of New Jersey pursuant to N.J.S.A. 52:32-59.

1.14. SOURCE DISCLOSURE – Pursuant to N.J.S.A. 52:34-13.2 and when applicable to the total value of the contract, contractor represents and warrants that the goods and/or services shall be created or performed entirely within the United States. Exceptions may be granted by the Vice President for Finance and Treasurer if the service cannot be provided or the goods manufactured by the contractor or its subcontractor within the United States.

2. INDEMNIFICATION AND INSURANCE

2.1 LIABILITY - COPYRIGHT - The contractor shall indemnify, defend, and hold harmless the University, the State of New Jersey and New Jersey Educational Facilities Authority, and their respective officers, agents, servants and employees, harmless from liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used by contractor in the performance of his contract.

2.2 INDEMNIFICATION - The contractor shall assume all risk of and responsibility for, and agrees to defend, indemnify and hold harmless the University, the New Jersey Educational Facilities Authority and the State of New Jersey, including their trustees, officers, employees, volunteers and agent from and against any and all claims, demands, suits, actions, recoveries, judgments, costs and expenses (including reasonable attorney’s fees) in connection therewith on account of the loss of life, property, or injury or damage to the person, body or property, of any person or persons whatsoever, which shall arise from or result directly or indirectly from the services provided by contractor under this contract. This indemnification obligation is not limited by, but is in addition to the insurance obligations contained in this agreement.
2.3 INSURANCE - The contractor shall secure and maintain in force for the term of the contract liability insurance as provided herein. All insurance coverage is subject to the approval of the University and shall be issued by an insurance company authorized to do business in the State of New Jersey and which maintains an A.M. Best rating of A- (VII) or better.

The contractor shall provide the University’s Procurement Services Department current certificates of insurance for all coverage and renewals thereof which must contain the provision that the insurance provided in the certificate shall not be canceled for any reason except after thirty (30) days written notice to the University’s Procurement Services Department. All insurance required herein shall contain a waiver of subrogation in favor of the University, State and NJEFA. All insurance required herein, except Workers’ Compensation, shall name Montclair State University, the State of New Jersey, and the New Jersey Educational Facilities Authority as additional insureds.

The insurance to be provided by the contractor for the term of the contract and any agreed upon extension thereof shall be as follows.

**Commercial General Liability** insurance written on an occurrence form including independent contractor liability, products/completed operations liability, contractual liability, covering but not limited to the liability assumed under the indemnification provisions of this contract. The policy shall not include any endorsement that restricts or reduces coverage as provided by the ISO CG0001 form without the approval of the University. The minimum limits of liability shall not be less than a combined single limit of one million dollars ($1,000,000) per occurrence, two million dollars ($2,000,000) general aggregate, two million dollars ($2,000,000) product/completed operations aggregate. A “per location or project endorsement” shall be included, when applicable, so that the general aggregate limit applies separately to the location or project that is the subject of this contract.

**Comprehensive Automobile Liability** covering contractor’s owned, non-owned, and hired vehicles when the contract requires the contractor’s presence on University property. The limits of liability shall not be less than a combined single limit of one million dollars ($1,000,000) per occurrence.

**Worker's Compensation** Insurance applicable to the laws of the State of New Jersey or other State or Federal jurisdiction applicable to contractor to protect the employees of the contractor and any subcontractor who will be engaged in the performance of this contract. The certificate must indicate that no proprietor, partner, executive officer or member is excluded. This insurance shall include Employers’ Liability Protection with a limit of liability not less than one million dollars ($1,000,000) bodily injury, each occurrence, one million dollars ($1,000,000) disease, each employee, and one million dollars ($1,000,000) disease, aggregate limit. Lower primary limits will be accepted if employer’s liability insurance is included under the umbrella insurance and the umbrella limit exceeds the employer’s liability limit requirements.

**Excess Liability**, umbrella insurance form, applying excess of primary to the commercial general liability, commercial automobile liability and employer’s liability insurance shall be provided with
minimum limits of five million dollars ($5,000,000) per occurrence, five million dollars ($5,000,000) general aggregate, and five million dollars ($5,000,000) products/completed operations when the University determines it is appropriate.

The contractor shall require all subcontractors to comply with all of the insurance requirements described above. It is a contractor option to determine the amount of excess liability it will require its subcontractors to carry. The contractor shall be responsible for obtaining certificates of insurance for all coverage and renewals thereof for each subcontractor prior to the subcontractor’s beginning work. The contractor shall provide copies of all subcontractor certificates of insurance to Procurement Services.

3. CONTRACT TERM AND EXTENSION

The term of the contract shall commence on the date a Purchase Order is issued by the University and shall continue for the period of time specified in the Purchase Order. In the event the contract has an extension option and the University determines that it is in the best interest of the University to extend the contract, the contractor will be so notified prior to the expiration date of the existing contract by the issuance of a Purchase Order. The contractor shall have 15 calendar days to respond to the extension request. If the contractor agrees to the extension, all terms and conditions of the original contract, including price, will be applicable.

4. CONTRACT TERMINATION

a. Change of Circumstance:

   Notwithstanding any provision or language in this contract to the contrary, where the needs of the University significantly change, or the contract is otherwise deemed no longer to be in the University’s interest, the University may terminate the contract upon 30 days written notice to the contractor.

b. For cause:

   1. Where the contractor fails to perform or comply with a contract, the University may terminate the contract upon 10 days notice to the contractor with an opportunity to respond.

   2. Where a contractor continues to perform a contract poorly as demonstrated by documented late delivery, poor performance of service, short-shipping etc., the University may terminate the contract upon 10 days notice to the contractor.

      In the event of contract termination under a. above i.e. Change of Circumstance, the contractor will be compensated by the University for goods and/or services satisfactorily performed and accepted in accordance with the contract, up to the date of termination.

      In the event of termination of the contract under b. above, i.e. For Cause, the University may acquire the goods and/or services which are the subject of the terminated contract from
another source. If the price paid is greater than the contract price, the University may deduct the difference in price from any monies due the terminated contractor or, if no monies are due the terminated contractor, the difference in price shall be an obligation owed the University by the terminated contractor.

5. SUBCONTRACTING OR ASSIGNMENT

The contract may not be subcontracted or assigned by the contractor, in whole or in part, without the prior written consent of the University. Such consent, if granted, shall not relieve the contractor of any of his responsibilities under the contract.

Nothing contained in the specifications shall be construed as creating a contractual relationship between any subcontractor and the University.

6. PERFORMANCE GUARANTEE

The contractor certifies that:

a. The equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice.

b. All equipment supplied to the University that is operated by electrical current is UL listed where applicable.

c. All new machines are to be guaranteed as fully operational for the period stated in the contractor’s proposal from time of written acceptance by the University. The contractor will render prompt service without charge, regardless of geographic location.

d. During the warranty period, the contractor shall replace immediately any material which is rejected for failure to meet the requirements of the contract.

e. All services rendered to the University shall be performed in strict and full accordance with the specifications stated in the contract and within the professional standards of contractor’s industry.

7. DELIVERY GUARANTEE

All items contracted for are F.O.B. Destination. Regardless of the method of quoting shipments, the contractor shall assume all costs, liability and responsibility for the delivery of merchandise in good condition to the University. The University reserves the right to deduct from the Contractor’s invoice all charges incurred by the University in the event any items are shipped and delivered on a “Collect” basis via common carrier in lieu of the specified F.O.B. Destination.

Rev 6-27-2021
The contractor is responsible for the delivery of material in first class condition to the University in accordance with good commercial practice. The contractor shall only ship those items and quantities that are covered by contract. If a review of material received indicates that material other than that covered by the contract has been ordered and delivered, the University will take such steps as are necessary to have the material returned, regardless of the time elapsed between delivery and discovery of the violation. Compliance with this requirement is the full responsibility of the contractor.

The University shall accept deliveries during normal business hours, 7:00 a.m. to 5:00 p.m. on normal business days (Monday through Friday).

All items must be delivered into and placed at a point within the buildings as directed by the University. Notification must be given 24 hours in advance on any single item weighing over 500 pounds by calling the University’s Central Receiving at 973-655-4359.

Unloading and the placing of any supplies or equipment at specified site is the sole responsibility of the contractor. The contractor shall notify the assigned trucker for implementation of this requirement at no additional cost to the University.

In the event delivery of goods or services is not made within the number of days contracted, the University’s Procurement Services Department may authorize the purchase of the goods and services from any available source. If the price paid is greater than the contract price, the University may deduct the difference in price from any monies due the defaulting contractor or, if no monies are due the defaulting contractor, the difference in price shall be an obligation owed the University by the defaulting contractor.

8. MAINTENANCE OF RECORDS

The contractor shall maintain all documentation related to products, transactions and/or services under this contract for a period of five (5) years from the date of final payment. Such records shall be made available to the University and/or the NJ State Comptroller upon request.

9. PRICE FLUCTUATION DURING CONTRACT

In the event contractor offers goods or services at a price lower than that paid by the University, contractor shall reduce the price charged to the University for any undelivered good or service and on any subsequent order placed by the University during the term of the contract.

10. TAX CHARGES

The University is exempt from State sales or use taxes and Federal excise taxes. Prices charged must not include such taxes.

11. PAYMENT TO CONTRACTOR

Payment for goods and/or services purchased by the University will be made to the contractor within 30 days of the later of an acceptable invoice from the contractor or the University’s acceptance of the
contracted products and/or services. All non-disputed charges shall be paid by the University in accordance with New Jersey’s Prompt Payment Act, N.J.S.A. 52:32-32, et. seq. If the contract with contractor exceeds the University’s fiscal year which ends on June 30, payment to contractor shall be subject to the availability of annual appropriations by the State of New Jersey sufficient to meet all of the University’s annual payment obligations.

12. STANDARDS PROHIBITING CONFLICTS OF INTEREST

The following prohibitions on contractor activities shall apply to all contracts or purchase agreements made with the University, pursuant to Executive Order No. 189 (1988):

a. The contractor shall not pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any University officer or employee or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i, of any such University officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such University officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.

b. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any University officer or employee from the contractor shall be reported in writing forthwith by the contractor to the Attorney General and the Executive Commission on Ethical Standards.

c. The contractor may not, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such contractor to, any University officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to the University, or with any person, firm or entity with which he or she is employed or associated or in which he or she has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the University officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

d. The contractor shall not influence, or attempt to influence or cause to be influenced, any University officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.

e. The contractor shall not cause or influence, or attempt to cause or influence, any University officer or employee to use, or attempt to use, his or her official position to secure unwarranted privileges or advantages for the vendor or any other person.

f. The provisions cited above in paragraph 12a. through 12e. shall not be construed to prohibit a University officer or employee from receiving gifts from or entering into contracts with the
contractor under the same terms and conditions that are offered or made available by contractor to members of the general public.

13. NOTICES: All notices required under this contract shall be in writing and shall be validly and sufficiently served by the University upon the contractor if addressed and mailed by certified mail to the address set forth in the contractor’s proposal. Notices from the contractor to the University shall be addressed and mailed by certified mail to the attention of the Vice President for Finance and Treasurer, Montclair State University, 1 Normal Avenue, Montclair, NJ 07043, with a copy to attention of University Counsel at the same address.


15. CHOICE OF LAW/VENUE: All disputes arising under the contract shall be governed by the laws of the State of New Jersey without regard to conflict of laws principles and shall be resolved by the Superior Court of New Jersey.

16. COMMISSIONS: Pursuant to N.J.S.A. 18A:64N-26, Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. In the event of any breach or violation of this warranty, the University shall have the right to terminate the contract without liability for payment to the contractor, or in its discretion, the University may deduct from the contract price the full amount of such commission, percentage, brokerage or contingent fee.

17. FERPA: To the extent that Contractor is provided access to education records, Contractor agrees to abide by the limitations on re-disclosure of personally identifiable information from student education records as set forth in the Family Educational Rights and Privacy Act, 34 CFR 99.33(a) (2), which states that officers, employees and agents of a contractor that receive education record information from the University may use such information only for the purposes for which the disclosure was made by the University and as required by the Agreement.

17.1. Contractor agrees to hold education records in strict confidence, and shall not use or disclose except as permitted or required for the performance of the contract, as required by law, or as otherwise authorized in writing by MSU.

17.2. Contractor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted student records received from, or on behalf of MSU or its students. These measures will be extended by contract to all subcontractors used by contractor.

17.3. If MSU reasonably determines in good faith that contractor has breached its confidentiality obligations under this section, MSU, in its sole discretion, shall have the right to require Company to submit to a plan of monitoring and reporting; provide contractor with a fifteen (15) day period to cure the breach;
or terminate immediately if cure is not possible. Before exercising any of these options, MSU shall provide written notice to contractor describing the violation and the action it intends to take.

17.4. Contractor shall, within one day of discovery, report to MSU any use or disclosure of student records not authorized by this agreement or in writing by MSU. Company’s report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the record used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by MSU.

17.5. Upon termination, cancellation, expiration or other conclusion of the Agreement, Contractor shall return all student records to MSU or, if return is not feasible, destroy any and all student record. If contractor destroys the records, Contractor shall provide MSU with a certificate confirming the date of destruction.

18. EUGDPR: To the extent applicable, Contractor agrees to the Standard Contractual Clauses for Controller/Processor pursuant to EU Commission Decision C(2010)593 and which are set forth in the University Data Protection Addendum which is incorporated by reference as if fully restated herein and can be found on the University website now or as may be amended in the future by the University to ensure compliance with applicable European Union governing laws, regulations, directives and guidance. See, https://www.montclair.edu/procurement/forms/.

19. REPORTS REQUIRED FOR SERVICE CONTRACTS: Pursuant to N.J.S.A. 34:11-56.14 and to the extent applicable, a Contractor who enters into a contract with the University for the purchase of services, shall provide a report to the Commissioner of Labor and Workforce Development, regarding the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category. To the extent applicable, the Contractor shall provide reports for every establishment of the Contractor having employees. To the extent applicable, the Contractor shall report such information using a form adopted by the Commissioner which can currently be found on the NJ Department of Labor website here: https://www.nj.gov/labor/forms_pdfs/equalpayact/mw563(6-18)annualequalpay.pdf. Instructions for filling out the form can also be found here: https://www.nj.gov/labor/forms_pdfs/equalpayact/mw-564_instructions.pdf. Reports when required may be made via a printable PDF available on the Department of Labor web site, or uploaded in a spreadsheet. Completed reports should be emailed to: equalpayact@dol.nj.gov or such other address identified by the Commissioner. Reporting is not required by Contractors who have entered into a contract with the University to purchase only goods or products.

20. REPORTS REQUIRED FOR PUBLIC WORKS CONTRACTS: Pursuant to N.J.S.A. 34:11-56.14, a Contractor who enters into a contract with the University for a public work, as defined in N.J.S.A. 34:11-56.26, shall provide a report to the Commissioner of Labor and Workforce
Development, through certified payroll records as required by N.J.S.A. 34:11-56.25, containing information regarding the gender, race, job title, occupational category, and rate of total compensation of every employee of the Contractor employed in the State of New Jersey in connection with the contract with the University. The Contractor shall provide a report to the Commissioner throughout the duration of the contract with an update to the information whenever payroll records are required to be submitted to the University pursuant to N.J.S.A. 34:11-56.25, et. seq. The Contractor shall report such information using a form adopted by the Commissioner which can currently be found on the NJ Department of Labor website here: https://www.nj.gov/labor/forms_pdfs/equalpayact/MW-562withoutfein.pdf. Instructions for filling out the form can be found here: https://www.nj.gov/labor/forms_pdfs/equalpayact/mw-564_instructions.pdf. Reports may be made via a printable PDF available on the Department of Labor website, or uploaded in a spreadsheet. Completed reports should be emailed to: equalpayact@dol.nj.gov or such other address identified by the Commissioner.

21. FORCE MAJEURE: Montclair State University will not be liable for performance delays or for non-performance due to unforeseen events such as acts of God, war, riot, national or state emergencies, epidemic/pandemic, labor dispute, fire, casualty, natural disaster, power failure or other circumstances beyond the University’s reasonable control (“Force Majeure”). In the event of Force Majeure, the University shall send notice to the other party indicating those obligations, in whole or part, which cannot be performed as a result of Force Majeure, and the expected duration of the inability to perform. If Force Majeure exists for a period of 30 days or longer, the University may elect to reschedule or terminate the Agreement or Purchase Order. If the University elects to reschedule, the sole remedy provided to the other party shall be satisfaction of the obligations on a mutually agreeable date in the future, and a credit of amounts previously paid. In the event the University elects to terminate, the parties shall have no further obligation to each other except for payment obligations pro-rated to the date of termination. The University’s obligation to make or refund payments to the other party shall be subject to the availability of annual appropriations by the State of New Jersey sufficient to meet all of the University’s annual payment obligations.

22. SOFTWARE-AS-A SERVICE TERMS: In addition to the foregoing, this section shall apply to a contractor who provides the University web-based services and any functionality included therein (“Services”) and/or holds transactional data and other content generated by the University’s use of the services (“MSU Data”).

22.1. SECURITY - Contractor will prevent unauthorized access to the computer hardware, servers, mainframes, and other equipment or operating software used by contractor to provide the services (“Computer Systems”), and any databases or files provided or used by Contractor containing MSU Data. Contractor will ensure that only authorized users have access to the Services and only for the purposes authorized by this contractor. To the extent MSU Data is stored in databases or files owned or controlled by contractor, contractor will prevent unauthorized destruction, alteration or loss of MSU’s Data. Contractor will maintain an audit log of access to the Services, which it will provide to MSU promptly upon request. To maintain the integrity of the Computer Systems, Contractor will install all security upgrades and patches as soon as reasonably possible.

Contractor certifies that (1) its treatment of MSU Data and Confidential Information is in compliance with applicable laws and regulations with respect to privacy and data security, and (2) it has implemented and
currently maintains an effective information security program, including administrative, technical, and physical safeguards to: (a) ensure the security and confidentiality of MSU Data and Confidential Information; (b) protect against any anticipated threats or hazards to the security or integrity of such Personal Information; and (c) protect against unauthorized access to, destruction, modification, disclosure or use of MSU Data and Confidential Information that could result in substantial harm or inconvenience to MSU, or to any person who may be identified therein. Contractor shall immediately notify MSU if Contractor is in material breach of this Section. In addition, upon reasonable request by MSU, Contractor will certify in writing to MSU, its compliance with the terms of this Section and will provide MSU access to any audits of Contractor the demonstrates compliance with the privacy and security provisions of this Section. Any security audits conducted by Contractor during the term of this Agreement shall be provided to MSU within five (5) business days after the audit report is finalized. The audit provided by contractor to MSU shall be kept confidential unless otherwise required by applicable law.

22.2. CONTENT DELIVERY - At all times during the Term, Contractor will provide MSU with real-time access to MSU Data via secure access to a website operated and controlled by Provider. Contractor shall provide MSU a copy of MSU Data in a reasonable format upon the request of MSU. MSU Data shall be treated by Contractor as Confidential Information and shall be and remain the sole and exclusive property of MSU. MSU provides to Contractor a limited right to MSU Data for the sole and exclusive purpose of providing the Services, including a right to store, record, transmit, maintain, and display MSU Data only to the extent necessary to provide the Services to MSU.

22.3. STORAGE AND BACKUP - In the event Contractor stores MSU Data, Contractor shall not have the right to reproduce, use, change, publish, display, distribute or transfer MSU Data to any third party without MSU’s prior written consent. If the Services are interrupted for any reason other than scheduled maintenance, Contractor will immediately activate its disaster recovery plan so that Services will continue without further interruption and notify MSU of this activation.

22.4. USE AND NON-DISCLOSURE OF CONFIDENTIAL INFORMATION - Confidential Information includes: 1) MSU Data; 2) passwords; 3) all data and information concerning the users of the Services; 4) information relating to MSU information technology; 5) information concerning MSU employees and students; and 6) confidential or proprietary information received by MSU from third parties and with whom MSU conducts business. Contractor agrees to: 1) keep and maintain all Confidential Information in strict confidence; 2) use and disclose Confidential Information solely for the purposes of providing the Services and not use or disclose this information for Contractor’s own benefit or for the benefit of anyone other than MSU; and 3) not, directly or indirectly, disclose Confidential Information to anyone outside Contractor, except with MSU’s prior written consent or as required for delivery of the Services. Upon the earlier of (a) the termination of the Term, (b) a determination that Contractor does not need the Confidential Information, or (c) at MSU’s request, contractor shall dispose all Confidential Information (including all backup records or other copies) relating to the Confidential Information. At MSU’s option, Contractor may dispose Confidential Information by promptly delivering the records to MSU or destroying them pursuant to Contractor’s written policy governing record destruction, and in a manner that renders the records unreadable and undecipherable by any means. Upon any occurrence of (a), (b), or (c) of this subsection, Contractor will promptly certify in writing to MSU, in a form acceptable to MSU and executed by an authorized officer of Contractor, that all Confidential Information has been destroyed or returned to MSU.
22.5. SECURITY INCIDENT - Contractor will notify MSU, promptly and without unreasonable delay, after learning of unauthorized access to MSU Data or Confidential Information (“Security Incident”). Contractor will, at its own cost and expense: 1) promptly furnish to MSU full details of the Security Incident; 2) assist and cooperate fully in MSU’s investigation of Contractor or third parties related to the Security Incident making available all relevant records, logs, files, and data; 3) cooperate with MSU in any litigation or other formal action against third parties deemed necessary by MSU to protect MSU’s rights; and 4) promptly use its best efforts to prevent a recurrence of any Security Incident. Contractor also agrees that MSU has the sole right to determine: 1) whether or not any notices of a Security Incident are required by law or regulation; 2) the recipients of each notice of a Security Incident, including individuals, regulators, law enforcement agencies, and consumer reporting agencies; 3) the contents of each notice; 4) whether any type of remediation is offered to affected persons, and the nature and extent of the remediation. Contractor will bear the cost and expense of all notices and remediation of a Security Incident, and shall be responsible for any claims, costs and expenses arising out of a Security Incident.

AUTHORIZED SIGNATURE

NAME

TITLE

COMPANY NAME

DATE