

MONTCLAIR STATE UNIVERSITY
STANDARD CONTRACT TERMS AND CONDITIONS

- I. The undersigned (“contractor” or “company”) agrees that the following terms and conditions (collectively the " Montclair Standard Terms and Conditions") are incorporated into the contract awarded by Montclair to the contractor.
- II. In the event the terms and conditions within the contractor’s proposal or contract conflict with the Montclair Standard Terms and Conditions, the Montclair 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 Montclair.

1. NEW JERSEY AND FEDERAL LAWS REQUIRING COMPLIANCE BY ALL CONTRACTORS

1.1 **BUSINESS REGISTRATION** (Contracts in excess of \$5,325) - 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 execution of a contract with the contractor pursuant to N.J.S.A. 52:32-44. The contractor must provide proof of a valid and current business registration with the Division of Revenue to the Montclair Procurement Services Department prior to contract award. 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/njbsg/services/html. Contractor’s failure to provide a copy of a BRC as required by NJSA 52:32-44 or providing false information of business registration shall result in liability for a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration copy not properly provided under a contract with Montclair, or as otherwise required by all applicable laws. 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 Montclair Procurement Services Department prior to contract award.

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 at: <https://www.montclair.edu/procurement/wp-content/uploads/sites/159/2022/01/Goods-and-Services-EEO-AA-Language-6-1-21.pdf> and <https://www.montclair.edu/procurement/wp-content/uploads/sites/159/2021/06/Construction-EEO-AA-Language-6-1-21.pdf>.

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 Montclair, 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 or lower tier subcontractors it might employ to perform the work has been suspended or debarred by the Commissioner, Department of Labor and Workforce Development.

1.4. **BUILDING SERVICES** - Pursuant to N.J.S.A. 34:11-56.58 et seq., in any contract for building services, as defined in N.J.S.A. 34:11-56.59, the employees of the contractor or its subcontractors shall be paid prevailing wage for building services rates, as defined in N.J.S.A. 34:11.56.59. The prevailing wage shall be adjusted annually during the term of the contract.

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 Montclair 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 Montclair 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 Montclair Ownership Disclosure Form found at: <https://www.montclair.edu/procurement/forms/>.

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 prevents Montclair from entering into a contract with the contractor, the contract shall be null and void, Montclair shall have no payment obligation, and the contractor shall return any funds received from Montclair.

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. This form can be found on Montclair's Procurement Services webpage at: <https://www.montclair.edu/procurement/forms/>.

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 Montclair's Procurement Services unit. 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/>.

1.9. 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, Montclair, in coordination with the State Treasurer, may set off that payment by the amount of the indebtedness.

1.10. IRAN INVESTMENT DISCLOSURE – Pursuant to N.J.S.A. 52:32-57, et seq., contractor represents and warrants that: a) it is not providing goods or services of \$20,000,000 or more in the energy sector of Iran, including oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran, and b) is not a financial institution that extends \$20,000,000 or more in credit to another person or

entity, for 45 days or more, that person or entity will use to provide goods or services in the energy sector in Iran. A breach of this representation and warranty shall be a material breach and permits Montclair to terminate 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.

1.11. 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. In the event contractor’s goods and/or services are not created or performed entirely within the United States, contractor shall demonstrate to Montclair that there is no other available source for the goods and/or services within the United States, and approval shall be documented in writing by the Vice President for Finance and Treasurer or designee. A breach of this representation and warranty shall be a material breach and permits Montclair to terminate the contract immediately and Montclair shall have no obligation to make payment to the contractor.

1.12. RUSSIA/BELARUS DISCLOSURE – Pursuant to N.J.S.A. 52:32-60, contractor represents and warrants that: (1) contractor is not a company in which the Government of Russia or Belarus has any direct equity share; (2) contractor does not have any business operations that involve contracts with or the provision of goods or services to the Government of Russia or Belarus; (3) contractor is not headquartered in Russia and does not have its principal place of business in Russia or Belarus, and (4) contractor is not supporting, assisting or facilitating the Government of Russia or Belarus in their campaigns to invade the sovereign country of Ukraine, either through in-kind support or for profit. If Montclair determines, using credible information available to the public and after providing notice and an opportunity to comment in writing for the contractor to demonstrate that it is not engaged in prohibited activities in Russia or Belarus, that the representation and warranty provided by the contractor herein is falsely, and the contractor fails to demonstrate to Montclair that the contractor has ceased its engagement in the prohibited activities in Russia or Belarus within 90 days after the determination the contractor’s representation and warranty is false, the following shall apply: (a) subject to the Attorney General undertaking a civil action as required by this section, a civil penalty in an amount that is equal to the greater of \$1 million or twice the amount of contractor’s total contract; (b) termination of the contract as deemed appropriate by Montclair; (c) ineligibility to enter into or renew a contract with Montclair for a period of three years from the date of Montclair’s determination that the contractor falsely represented and warranted it did not engage in prohibited activities in Russia or Belarus provided that the contractor has ceased its engagement in the prohibited activities in Russia or Belarus. Montclair shall report to the Attorney General the name of the contractor that Montclair determined has submitted a false representation and warranty under this section, together with its information as to its falsity, and the Attorney General shall determine whether to bring a civil action against the contractor to collect a civil penalty. Only one civil action against the contractor to collect the civil penalty described above may be brought for such a false representation and warranty under this section. A civil action to collect such penalty shall commence within three years from the date the false representation and warranty is made by the contractor to Montclair.

1.13. NON-COLLUSION – Contractor warrants and represents that contractor has not directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free, competitive bidding in connection with Montclair entering into a contract with contractor.

1.14. MAINTENANCE OF RECORDS - Pursuant to N.J.A.C. 17:44-2.2, 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 Montclair and/or the NJ State Comptroller upon request.

1.15. PAYMENT TO CONTRACTOR - Payment for goods and/or services purchased by Montclair will be made to the contractor within 30 days of the later of an acceptable invoice from the contractor or Montclair’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 Montclair’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 Montclair’s annual payment obligations.

1.16. STANDARDS PROHIBITING CONFLICTS OF INTEREST - The following prohibitions on contractor activities

shall apply to all contracts with Montclair pursuant to Executive Order No. 189 (1988) and N.J.S.A. 52:13D-19:

- 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 Montclair 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 Montclair 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 Montclair 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 Montclair, 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 Montclair 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 Montclair 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 Montclair 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 shall not be construed to prohibit a Montclair 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.

1.17. CLAIMS - Claims asserted shall be subject to the New Jersey Tort Claims Act, N.J.S.A 59:1-1, et seq., and/or the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.

1.18. 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, Montclair shall have the right to terminate the contract without liability for payment to the contractor, or in its discretion, Montclair may deduct from the contract price \the full amount of such commission, percentage, brokerage or contingent fee.

1.19. 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 Montclair 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/equalspayact/mw563\(6-18\)annualequalpay.pdf](https://www.nj.gov/labor/forms_pdfs/equalspayact/mw563(6-18)annualequalpay.pdf). Instructions for filling out the form can also be found here: https://www.nj.gov/labor/forms_pdfs/equalspayact/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: equalspayact@dol.nj.gov or such other address identified by the Commissioner. Reporting is not required by Contractors who have entered into a contract with Montclair to purchase only goods or products.

1.20. **REPORTS REQUIRED FOR PUBLIC WORKS CONTRACTS** - Pursuant to N.J.S.A. 34:11-56.14, a Contractor who enters into a contract with Montclair 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 Montclair. 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 Montclair 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 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.

1.21. **FEDERALLY FUNDED CONTRACTS** – If the contractor will be paid by Montclair using federal funds, contractor and its subcontractor(s) 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 Montclair Procurement webpage at: <https://www.montclair.edu/procurement/forms/>. To the extent applicable to the contract, contractor shall also comply with the Montclair 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

1.22. **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 no less than the W3C's Web Content Accessibility Guidelines 2.0 Level AA ("Benchmarks for Accessibility"). Contractor shall ensure that content and functionality provided by contractor on Montclair'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.

1.23. **CERTIFICATION OF FEDERAL NON-DEBARMENT.** Pursuant to N.J.S.A. 52:32-44.1, I, Contractor certifies that: a) Contractor is not debarred at the federal level from contracting with the federal government; and b) none of the parent entities, subsidiaries, related entities or affiliates of the Contractor are debarred at the federal level from contracting with the federal government. Contractor acknowledges that it is a crime if the foregoing is false, that Contractor will be subject to criminal prosecution and shall be in material breach of the contract(s) with the University entitling the University to take action against Contractor as may be appropriate and permitted by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring Contractor in default and/or seeking debarment or suspension.

2. INDEMNIFICATION AND INSURANCE

2.1. **INFRINGEMENT INDEMNIFICATION**- The contractor shall indemnify, defend, and hold harmless Montclair, the State of New Jersey and New Jersey Educational Facilities Authority ("NJEFA"), 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. GENERAL INDEMNIFICATION - The contractor shall assume all risk of and responsibility for, and agrees to defend, indemnify and hold harmless Montclair, the State of New Jersey and NJEFA, 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 Montclair 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 Montclair 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. Pursuant to the NJ Tort Claims Act, no insurance carrier, as required herein, may be permitted to file a subrogation action against Montclair, State and/or NJEFA. All insurance required herein, except Workers' Compensation, shall name Montclair, the State of New Jersey, and NJEFA 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.

a. 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 Montclair. 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 the contract is for construction services or when otherwise requested in writing by Montclair, so that the general aggregate limit applies separately to the location or project that is the subject of this contract.

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

c. 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.

d. 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 Montclair 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 Montclair and shall continue for the period of time specified in the Purchase Order. In the event the contract has an extension option and Montclair determines that it is in the best interest of Montclair 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

4.1. CHANGE OF CIRCUMSTANCE - Notwithstanding any provision or language in this contract to the contrary, where the needs of Montclair significantly change, or the contract is otherwise deemed no longer to be in Montclair's interest, Montclair may terminate the contract upon 30 days written notice to the contractor. In the event of contract termination due to Change of Circumstance, the contractor will be compensated by Montclair for goods and/or services satisfactorily performed and accepted in accordance with the contract, up to the date of termination.

4.2. FOR CAUSE

- a. Where the contractor fails to perform or comply with a contract, Montclair may terminate the contract upon 10 days' notice to the contractor with an opportunity to respond.
- b. Where a contractor continues to perform a contract poorly as demonstrated by documented late delivery, poor performance of service, short-shipping etc., Montclair may terminate the contract upon 10 days' notice to the contractor.

In the event of termination of the contract For Cause, Montclair 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, Montclair 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 Montclair 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 Montclair in order to ensure the assignee shall comply with Section 1 of Montclair's Standard Terms and Conditions. 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 Montclair.

6. PERFORMANCE GUARANTEE

6.1. FOR GOODS - To the extent contractor is providing goods to Montclair, 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 Montclair 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 Montclair. 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.

6.2. FOR SERVICES - To the extent contractor is performing services for Montclair, contractor warrants and represents that all services rendered to Montclair 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 FOR CONTRACTS FOR THE PURCHASE OF GOODS

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 Montclair. Montclair reserves the right to deduct from the Contractor's invoice all charges incurred by Montclair 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.

The contractor is responsible for the delivery of material in first class condition to Montclair 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, Montclair 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.

Montclair 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 Montclair. Notification must be given 24 hours in advance on any single item weighing over 500 pounds by calling Montclair 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 Montclair.

8. PRICE FLUCTUATION DURING CONTRACT

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

9. TAX CHARGES

Montclair is exempt from State sales or use taxes and Federal excise taxes. Prices charged must exclude such taxes.

10. NOTICES

All notices required under this contract shall be in writing and shall be validly and sufficiently served by Montclair 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 Montclair 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.

11. 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. Notwithstanding the foregoing, where federal law is applicable to resolution of a dispute and requires venue in federal court, federal law shall govern and shall be resolved by the U.S. District Court venued in New Jersey.

12. 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 Montclair may use such information only for the purposes for which the disclosure was made by

Montclair and as required by the Agreement.

12.1. 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 Montclair.

12.2. 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 Montclair or its students. These measures will be extended by contract to all subcontractors used by contractor.

12.3. If Montclair reasonably determines in good faith that contractor has breached its confidentiality obligations under this section, Montclair, in its sole discretion, shall have the right to require Contractor 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, Montclair shall provide written notice to contractor describing the violation and the action it intends to take.

12.4. Contractor shall, within one day of discovery, report to Montclair any use or disclosure of student records not authorized by this agreement or in writing by Montclair. Contractor'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 Montclair.

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

13. EUGDPR

To the extent Contractor shall collect, store or process personal data within the European Union, 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 Montclair Data Protection Addendum which is incorporated by reference as if fully restated herein and can be found on the Montclair website now or as may be amended in the future by Montclair to ensure compliance with applicable European Union governing laws, regulations, directives and guidance. See, <https://www.montclair.edu/procurement/forms/>.

14. CHINA PIPL

To the extent Contractor shall collect, store or process personal data within the People's Republic of China, including the islands of Hainan Province and five major autonomous regions (i.e., Tibet, Inner Mongolia, Xinjiang, Ningxia, and Guangxi) but excluding the Hong Kong Special Autonomous Region, Macao SAR and Taiwan (collectively "Mainland China"). Contractor agrees to the terms and conditions in Montclair's China Data Handling Addendum which is incorporated by reference as if fully restated herein and can be found on the Montclair website now or as may be amended in the future by Montclair to ensure compliance with applicable China data privacy laws, regulations, directives and guidance. See, <https://www.montclair.edu/procurement/forms/>.

15. SOFTWARE-AS-A SERVICE TERMS

In addition to the foregoing, this section shall apply to a contractor who provides Montclair web-based services and any functionality included therein ("Services") and/or holds transactional data and other content generated by Montclair's use of the services ("Montclair Data").

15.1. 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 Montclair 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 Montclair Data is stored in

databases or files owned or controlled by contractor, contractor will prevent unauthorized destruction, alteration or loss of Montclair Data. Contractor will maintain an audit log of access to the Services, which it will provide to Montclair 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 Montclair 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 Montclair 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 Montclair Data and Confidential Information that could result in substantial harm or inconvenience to Montclair, or to any person who may be identified therein. Contractor shall immediately notify Montclair if Contractor is in material breach of this Section. In addition, upon reasonable request by Montclair, Contractor will certify in writing to Montclair, its compliance with the terms of this Section and will provide Montclair 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 Montclair within five (5) business days after the audit report is finalized. The audit provided by contractor to Montclair shall be kept confidential unless otherwise required by applicable law.

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

15.3. STORAGE AND BACKUP - In the event contractor stores Montclair Data, contractor shall not have the right to reproduce, use, change, publish, display, distribute or transfer Montclair Data to any third party without Montclair'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 Montclair of this activation.

15.4. USE AND NON-DISCLOSURE OF CONFIDENTIAL INFORMATION - Confidential Information includes: 1) Montclair Data; 2) passwords; 3) all data and information concerning the users of the Services; 4) information relating to Montclair information technology; 5) information concerning Montclair employees and students; and 6) confidential or proprietary information received by Montclair from third parties and with whom Montclair 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 Montclair; and 3) not, directly or indirectly, disclose Confidential Information to anyone outside Contractor, except with Montclair'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 Montclair's request, contractor shall dispose all Confidential Information (including all backup records or other copies) relating to the Confidential Information. At Montclair's option, Contractor may dispose Confidential Information by promptly delivering the records to Montclair 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 Montclair, in a form acceptable to Montclair and executed by an authorized officer of Contractor, that all Confidential Information has been destroyed or returned to Montclair.

15.5. SECURITY INCIDENT - Contractor will notify Montclair, promptly and without unreasonable delay, after learning of unauthorized access to Montclair Data or Confidential Information ("Security Incident"). Contractor will, at its own cost

and expense: 1) promptly furnish to Montclair full details of the Security Incident; 2) assist and cooperate fully in Montclair investigation of Contractor or third parties related to the Security Incident making available all relevant records, logs, files, and data; 3) cooperate with Montclair in any litigation or other formal action against third parties deemed necessary by Montclair to protect Montclair rights; and 4) promptly use its best efforts to prevent a recurrence of any Security Incident. Contractor also agrees that Montclair 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.

16. 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 Montclair’s reasonable control (“Force Majeure”). In the event of Force Majeure, Montclair 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, Montclair may elect to reschedule or terminate the Agreement or Purchase Order. If Montclair 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 Montclair elects to terminate, the parties shall have no further obligation to each other except for payment obligations pro-rated to the date of termination. Montclair’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 Montclair’s annual payment obligations.

AUTHORIZED SIGNATURE

NAME

TITLE

COMPANY NAME

DATE