The Arizona Board of Regents for and on behalf of Northern Arizona University (“University” or “NAU”) is seeking to negotiate an exclusive Athletic Apparel sponsorship contract and is requesting offers from any and all firms interested into contracting with the University for such sponsorship.

The following requirements for the negotiations process and/or inclusion in a resulting contract:

1. The contract term options will be for a period of five (5) years or a period of (7) seven years, whichever is most advantageous to the University becoming effective on July 1, 2023.

2. The University is a public entity and all material submitted for negotiation will, after contract award, be subject to review by participants in the negotiation process and members of the public.

3. The University intends to execute a contract with the firm that, at the conclusion of the negotiation process, it determines, in its sole discretion, provides terms that are in the best interest of the University.

4. The University reserves the right to cancel the negotiation process at any time without entering into a contract.

5. The University will not reimburse any cost incurred by your firm associated with this negotiation process.

6. The University may request a presentation, demonstration or samples be given to a selection committee in the event the Proposal is deemed to be among the most advantageous to the University.

7. In the event you have any objections to this process, notify Lanae Blocker, at Lanae.Blocker@nau.edu, no later than Monday, August 8, 2022 by 3:00PM local Arizona time.

8. The negotiation process will allow revisions to the terms of an offer, including financial.
9. Submit contract and financial terms by email to Lanae.Blocker@nau.edu, or by postal mail to 545 E Pine Knoll Drive, Flagstaff, AZ, 86011 for receipt by the University by no later than Monday August 8, 2022, by 3:00PM local Arizona time.

10. The following exhibits are provided:
   a. Exhibit A, University Athletics Profile and Spend
   b. Exhibit B, Requirements and Marketing Assets.
   c. Exhibit C, University Terms and Conditions.

11. University’s Terms and Conditions, which will be included in the contract awarded at the end of the negotiations.

12. Exclusion.
   a. University student athletes reserve the right to wear another manufacturer’s shoe if the shoe impedes or impacts negatively on the performance of the student athlete during an athletic contest. The University will work directly with the awarded firm to resolve the issue before another manufacturer’s shoe is worn. If no solution can be achieved, then with a physician’s note, the student-athlete may wear another manufacture’s shoe concealing the manufacturer’s logo on the shoe during games and practice sessions, and in any situation where his or her image may be photographed including, but not limited to social media and internal sports communication.

Sincerely,

Lanae Blocker
Procurement Coordinator, SR/PCard Administrator
Lanae.Blocker@nau.edu | 928-523-5248
PO Box 4124, Flagstaff, AZ 86011

Contracts, Purchasing, and Risk Management
NAU Athletics is a member of the Big Sky Conference. The Men’s Cross-Country team has won five of the last six NCAA Division 1 National championships. Fifteen NAU student-athletes have won NCAA individual championships including multiple championships by Lopez Lomong, Ida Nilsson, Johanna Nilsson and David McNeill. The Track & Field program has a rich history with regards to the Olympics, as the NAU Lumberjacks have been represented in every summer Olympics dating back to 1984.

The NAU athletic program has won over 29 conference championships in the last four years highlighted by a record nine championships in the 2021-22 academic year. NAU won the prestigious Big Sky Conference President’s Cup during the 2020-21 seasons and has captured seven of the last eight Men’s All-Sport trophies and four of the last five Women’s All-Sport Trophies.

NAU has recorded a cumulative grade point average of 3.39 among its more than 350 student-athletes over the last four years. In addition to excelling in the classroom, NAU student-athletes and staff average over 5,000 hours of community service annually.

NAU will televise over 60 contests from the Flagstaff campus during the 2021-2022 season. The coverage includes Football, Men’s and Women’s Basketball, Soccer and Volleyball. The contests are available nationwide on ESPN+. The reach of the telecasts is tremendous. ESPN+ subscribers alone total over 21.3 million, up 76 percent year over year, and continuing to grow. For example, during the 2021 season, NAU Football alone totaled over 475,000 unique viewers who watched for over 17.5 million minutes (291,000 hours). Over the last four years, NAU teams have also appeared on live linear television nearly 200 times including ESPN2, Altitude, Root Sports, Comcast Sports, PAC-12 Networks and local and regional stations.

NAU’s social media reach is immense and continues to grow. Over the last 4 years, Instagram followers for NAU Athletics main account has grown 32%, Twitter 31%, and Facebook 23%. NAU’s followers are actively engaged with these social media channels. During the 2021 calendar year, NAU’s Twitter account totaled over 3.5 million unique impressions and Facebook over 1 million.

NAU Enrollment is over 28,000 which includes the main Flagstaff campus location with over 22,000 students. In addition, NAU employs over 4,800 faculty and staff. NAU also has over 200,000 alumni worldwide. NAU’s main campus is situated in Flagstaff, Arizona which is consistently ranked as a national top college town, top place to live, and top vacation destination. The city of Flagstaff population is over 70,000 and the metropolitan area features a population of nearly 140,000. Flagstaff sits at the intersection of major transportation hubs I-40 and I-17 and conveniently located close to several major markets including Phoenix (145 miles), Las Vegas and Tucson (250 miles), Albuquerque (320 miles), Los Angeles (460 miles), and San Diego (480 miles). Nearby tourist destinations and attractions include the Grand Canyon National Park, Arizona Snowbowl, Sedona, Oak Creek Canyon, Lowell Observatory, Monument Valley, Petrified Forest National Park, Sunset Crater and Meteor Crater.
University Spend

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**NAU Athletics** sponsors 15 NCAA Division I athletic programs, including:

1. Men's Basketball
2. Women's Basketball
3. Men's Cross Country
4. Women's Cross Country
5. Football
6. Women's Golf
7. Women's Soccer
8. Women's Swimming & Diving
9. Men's Tennis
10. Women's Tennis
11. Men's Indoor Track & Field
12. Women's Indoor Track & Field
13. Men's Outdoor Track & Field
14. Women's Outdoor Track & Field
15. Women's Volleyball
16. NAU may be adding an additional sport within the next five to seven years.
Requirements

1. Provide arrangement of vendor relationship details.
   a. Direct or through a third-party

2. Provide contract options for the following:
   a. 5-year term (7/1/2023-6/30/2028)
   b. 7-year term (7/1/2023-6/30/3030)

3. Provide details for a transition plan from the University’s current provider.

4. Apparel colors, close to the University colors:
   a. NAU True Blue: Pantone 282 C, C100 M89 Y31 K35, R0 G51 B102, HEX 002454
   b. NAU Gold: Pantone 3514 C, CO M27 Y100 K0, R241 G 179 B0, HEX FAC01A

5. Provide details on the following:
   a. Pricing and discount details to include but not limited to the following:
      i. Footwear
      ii. Apparel
      iii. Inflatables (optional to include with proposal)
      iv. Auxiliary Products to include shipping, headwear and camp T-shirts.
      v. Pre-embellished apparel options.

6. Describe in detail:
   i. Signing bonuses.
   ii. Promotional merchandise that would be provided to each academic year.
   iii. Complimentary sport specific apparel such as uniforms, jerseys, shoes to be provided.
   iv. Access to discounted retail apparel items.
v. Contributions to the Athletic Director’s Discretionary Fund (Associated with guaranteed spend)

vi. Contributions to the Athletic Director’s Discretionary Fund (Associated without guaranteed spend)

vii. Contributions to be made to University camp programs.

viii. Associated with campus bookstore and retail sales.

b. Additional financial incentives may be proposed to the University.

7. The University is seeking Facility Signage in the forms of:

a. Two (2) mannequin apparel displays with cobranded signage in the Student Athlete High Performance Center.

   i. Mannequins and sponsorship for signage.

   ii. Ten (10) total mannequins – 6 female and 4 male

8. Provide details on how returns are handled, processed, and credited to account.

9. Describe how additional sports added by the University during the term of the contract will be handled.

10. Provide details on bonus compensation during the term of the contract for the following:

    a. Athletic programs achievements, such as the elite Men’s Cross-Country team which is a perennial top 10 program and has won 5 of the last 6 NCAA D-1 National Championships, will be marketed and promoted.

11. The University is seeking details for additional financial incentives offered which may include, but are not limited to:

    a. Purchase Volume

       i. Annual purchase volume discounts based upon university spend levels

    b. Administration

       i. Big Sky Conference President’s Cup

       ii. Big Sky Conference Men’s All Sports Trophy

       iii. Big Sky Conference Women’s All Sports Trophy

       iv. Athletic Director of the Year

       v. Learfield Director’s Cup – Top 50 Finish
vi. Learfield Director’s Cup – Top 100 Finish

c. Football
   i. National Championship
   ii. Championship Appearance
   iii. Semifinal Appearance
   iv. Quarterfinal Appearance
   v. National Coach of the Year
   vi. Playoff Appearance
   vii. Conference Championship
   viii. Conference Coach of the Year
   ix. FBS Victory
   x. Grand Canyon Trophy Victory

d. Men’s/Women’s Basketball
   i. National Championship
   ii. National Coach of the Year
   iii. Final Four Appearance
   iv. Elite Eight Appearance
   v. Sweet Sixteen Appearance
   vi. NCAA Tournament Appearance
   vii. Other Postseason Appearances
   viii. Regular Season Conference Championship
   ix. Conference Coach of the Year

e. Track & Field: Women’s Cross Country, Men’s Cross Country, Women’s Indoor Track & Field, Women’s Outdoor Track & Field, Men’s Indoor Track & Field and Men’s Outdoor Track & Field.
   i. National Championship
   ii. Top 10 Finish Nationally
   iii. National Coach of the Year
   iv. Conference Championship
v. Conference Coach of the Year (COY).

f. All Other Sports
   i. National Championship
   ii. National Coach of the Year
   iii. NCAA Postseason Appearance
   iv. Other Postseason Appearance
   v. Conference Championship
   vi. Conference Coach of the Year

Marketing Assets

17. The following promotional marketing assets to be provided by the University to the successful proposer under a resulting sponsorship contract:

18. Athletics Collateral Materials
   
   b. Logo placement in all sports related publications and game day programs.
   
   c. Logo placement on all collateral materials used to promote University Athletic Department, including but not limited to schedules, posters, camp brochures and coaches’ clinics.
   
   d. The option to include a flyer/brochure provided by Proposer into the University Athletic Department season ticket holder mailings free of charge.

19. Stadium Signage Inventory
   
   a. Football
      i. One (1) corporate digital logo within football stadium.
      
      ii. Video board signage rotation.
   
   b. Basketball
      i. One (1) digital courtside sign.
      
      ii. One (1) digital sign within basketball arena.
   
   c. All other venues:
      i. Signage where appropriate.
d. Public Address Announcements
   
   i. At facilities without videoboards, University Athletic Department to provide two (2) PA announcements during each athletic home game announcing the official supplier/outfitter of the University.

   ii. At facilities with videoboards, University Athletic Department to provide two (2) Video Board announcements during each athletic home game announcing the official supplier/outfitter of the University.

e. Athletics Website
   
   i. One (1) corporate logo and link on University Athletic Department website.

f. Direct Mail Inserts/Email Blasts
   
   i. The ability to include two (2) direct mail inserts for University Athletic Department per year.

      1. Successful Proposer to provide copy and content and will be responsible to pay for cost of the flyer.

   ii. Access to email database for up to four (4) email blasts per year. Successful Proposer to provide copy and content. University Athletic Department will approve design and distribute content. Intent will be to promote Successful Proposer/University licensed merchandise outlets.

g. Appearances – Football, Men’s/Women’s Basketball
   
   i. Schedule permitting: Head coach will make one (1) Successful Proposer-sponsored appearance per year. Written notice will be provided to Head Coach thirty (30) days prior.

   ii. Schedule permitting: Head Coach will make one (1) Successful Proposer-sponsored online/social network appearance per year. Written notice will be provided to Head Coach fourteen (14) days prior.

h. Season Tickets provided by Athletics Department
   
   i. Men’s and Women’s Basketball Season Tickets – six (6) tickets and two (2) parking passes free of charge

   ii. Football Season Tickets – eight (8) season tickets and two (2) parking passes free of charge

   iii. Football Sideline Passes – two (2) sideline passes per home game, upon request
iv. Football Road Game Package – Offer one (1) trip per year for two (2) guests including charter flight, lodging, ground transportation, and tickets/sideline passes, upon request.

v. Football Road Game Tickets – Offer up to four (4) road tickets per game, upon request.

vi. Football Playoff Game – Offer up to eight (8) playoff game tickets, free of charge, upon request

vii. Big Sky Conference Basketball Tournament – Offer up to four (4) tickets to the Men’s and Women’s Big Sky Conference Basketball Tournament, upon request
EXHIBIT C – Terms and Conditions

All exceptions must be submitted with justification and alternate language and must be submitted with Offer.

1. Term.

   a. The contract term options will be for a period of five (5) years or a period of (7) seven years, whichever is most advantageous to the University becoming effective on July 1, 2023.

   b. The University may terminate the Contract, in whole or in part, with or without cause, upon thirty (30) days written notice to Contractor. Subject to the provision of any Transition Services (as defined below), upon termination, Contractor will refund to the University all prepaid amounts for Services not delivered or performed. If the Contract is terminated pursuant to this section, subject to the provision of any Transition Services, the University will pay Contractor, as full compensation under the Contract: (1) the portion of Services delivered or performed and accepted prior to the effective date of termination based on the unit prices in the Contract, or, if no unit prices are provided, the pro rata amount of the total order price based on the amount delivered or performed; and (2) a reasonable amount, not otherwise recoverable from other sources by Contractor, and as approved by the University, with respect to the undelivered, unperformed, or unacceptable portion of the Services. In no event will compensation paid previously under the Contract together with compensation paid under this section exceed the total purchase order or Contract price.

   c. The University may terminate the Contract, in whole or in part, if Contractor defaults on any of its obligations in the Contract and fails to cure such default within seven (7) days after receiving notice of default from the University. In the event of such a default, the University may procure the Services from other sources and Contractor will be liable to the University for any excess costs the University incurs.

   d. The University shall have the right to terminate this Contract at any time in the event the Contractor files a petition in bankruptcy, or is adjudicated bankrupt; or if a petition in bankruptcy is filed against the Contractor and not discharged within thirty (30) days; or if the Contractor becomes insolvent or makes an assignment for the benefit of its creditors or an arrangement pursuant to any bankruptcy law; or if a receiver is appointed for the Contractor or its business.

   e. Upon termination of the Contract or termination of any Services (regardless of the reason for termination), the parties will work in good faith to transition the terminated Services to the University or its designee(s), with minimum interruption to the University’s business. At the University’s option, Contractor will continue to provide Services and will provide transition support at rates consistent with the terms of the Contract for a period of no longer than one-hundred and eighty (180) days following the termination date (the Transition Period). Contractor will provide the post-termination Services (the Transition Services) at
least at the same levels of quality and timeliness of performance as Services were provided prior to termination, in a professional manner, with high quality, and in accordance with industry standards. The parties may, by written agreement, modify the Transition Services to be provided and the length of the Transition Period.

2. **Survival.** All provisions of the Contract that anticipate performance after the termination of the Contract, and all provisions necessary or appropriate to interpret and enforce such provisions, will survive termination of the Contract.

3. **Settlement Method and Terms.** Payment will be subject to the provisions of Title 35 of the Arizona Revised Statutes (ARS), as amended from time to time, relating to time and manner of submission of claims. The University’s obligation will be payable only and solely from funds appropriated for the purpose of the Contract. After delivery and acceptance of the Services, Contractor will submit an acceptable invoice to the University. Invoices must be itemized, reference the appropriate University purchase order number, and include sufficient detail to document the invoiced amount. The University will pay Contractor for the Services delivered and accepted net 30 days after receipt by the University of an invoice meeting the requirements of this section. Invoices will be electronically delivered to the University’s Accounts Payable department by email to AccountsPayable@nau.edu.

4. **Independent Contractor.** Contractor is an independent contractor. Neither the University nor Contractor may bind the other. None of the Contractor Parties will be employees, agents, partners, or joint venturers of the University. None of the Contractor Parties will be eligible for any benefits from the University, including worker’s compensation coverage. Contractor is responsible to the University for compliance with the Contract by the Contractor, or any of its owners, officers, directors, members, managers, agents, employees, contractors or subcontractors at all tiers (together with Contractor, the Contractor Parties). Contractor will determine Contractor’s hours of work, and will provide all tools, equipment, and supplies Contractor determines to be necessary to deliver and perform the Services. Contractor will maintain all business registrations and licenses required to deliver and perform the Services. Contractor is using its own knowledge, skill, and technical know-how in the delivery and performance of the Services and is not being supervised by the University. The conduct and control of the Services lies solely with Contractor, and the University is interested only in final results.

5. **Work Product.** All reports, drawings and other work products in any medium produced by Contractor as a part of the Services rendered under this Contract shall be provided to and be the sole property of the University. Contractor shall not release this work product or other information obtained or produced pursuant to this Contract without the prior written consent of the University.

6. **Conflict of Interest.** The parties agree that this Contract may be canceled for conflict of interest in accordance with A.R.S. § 38-511.

7. **Dispute Resolution.** If a dispute arises under the Contract, the parties will exhaust all applicable administrative remedies provided for under Arizona Board of Regents Policy 3-809.
8. **Arbitration.** The parties agree to arbitrate disputes filed in Arizona Superior Court that are subject to mandatory arbitration pursuant to ARS § 12-133.

9. **Indemnification.**

   a. Contractor shall indemnify, defend and hold harmless, the University, the State of Arizona, and the Arizona Board of Regents and their employees and agents from all losses, damages, claims, liabilities, costs and expenses (including, without limitation, costs and expenses of litigation and alternative dispute resolution, reasonable attorneys’ and paralegals’ fees, worker’s compensation claims, unemployment compensation claims and unemployment disability claims) arising from any actual or alleged damage to property, injury to any person, or death of any person to the extent that such damage, injury or death arises from any actual or alleged act or omission (including, without limitation, negligence and willful misconduct) of Contractor or any of Contractor’s employees, agents or representatives in connection with or incident to performance of this Contract, provided, however, that this indemnification shall not include (i) losses, damages, claims, liabilities, costs and expenses arising from professional errors or omissions of Contractor or any of Contractor’s employees, agents or representatives or (ii) losses, damages, claims, liabilities, costs and expenses of the University or the Arizona Board of Regents arising from any obligation undertaken by the University or the Arizona Board of Regents in any contract entered into in connection with the Services of Contractor.

   b. Notwithstanding any expiration or termination of this Contract, this indemnification shall remain in effect indefinitely without termination as to acts and omissions actually occurring or alleged to have occurred prior to expiration of termination of this Contract.

10. **Non-Appropriation.** This Contract may be canceled without any further obligation on the part of the University in the event that sufficient appropriated funding is unavailable to assure full performance of its terms. Contractor shall be notified in writing of any such non-appropriation at the earliest opportunity.

11. **Inspection.** To the extent required by ARS § 35-214, all books, accounts, reports, files and other records relating to this Contract shall be subject at all reasonable times to inspection and audit by ABOR, the University, or the Auditor General of the State of Arizona, or their agents for five (5) years after completion of this Contract. Such records shall be produced at the University, or other location as designated by the University, upon reasonable notice to the Contractor.

12. **Authorized Presence Compliance.** As required by ARS § 41-4401, the University is prohibited from awarding a contract to any contractor or subcontractor that fails to comply with ARS § 23-214(A) (verification of employee eligibility through the e-verify program). Contractor warrants that it and its subcontractors comply fully with all applicable federal immigration laws and regulations that relate to their employees and their compliance with ARS § 23-214(A). A breach of this warranty will be a material breach of this Contract that is subject to penalties up to and including termination of this Contract. The University retains the legal
right to inspect the papers of any Contractor or Contractor Party employee who works hereunder to ensure that the Contractor or Contractor Party is complying with the above warranty.

13. **No Boycott of Israel.** If the Services provided under this Contract include the acquisition of services, supplies, information technology or construction with a value of at least $100,000 and Contractor is engaged in for-profit activity and has 10 or more full-time employees, then, to the extent required by ARS § 35-393.01, Contractor certifies it is not currently engaged in, and during the term of this Contract will not engage in, a boycott of goods or services from Israel.

14. **Insurance Requirements.** Without limiting any liability of or any other obligation of Contractor, Contractor shall procure and maintain (and cause its subcontractors to procure and maintain), until all of their obligations have been discharged or satisfied, including any warranty periods under this Contract, insurance against claims that may arise from or in connection with the performance of work hereunder by Contractor, its agents, representatives, employees or subcontractors, the minimum insurance coverages listed below, unless otherwise agreed to in writing. Contractor’s insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Authorized Insurers. Insurers shall have an “A.M. Best” rating of not less than A- VII. The University in no way warrants that the above required minimum insurer rating is sufficient to protect the Contractor from potential insurance insolvency. Self-insurance may be accepted in lieu of or in combination with the insurance coverage requested.

a. **Commercial General Liability** of $1,000,000 minimum limit for each occurrence and $2,000,000 general aggregate, to include coverage for bodily injury, property damage, personal and advertising injury, and broad form contractual liability coverage.

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b. If applicable, **Automobile Liability** of $1,000,000 minimum Combined Single Limit each occurrence, to include coverage for bodily injury and property damage for any owned, hired, and/or non-owned automobiles assigned to or used in the performance of this Contract.

c. **Workers Compensation** coverage for all employees which meets Arizona statutory benefits and Employers’ Liability insurance with a minimum limit of $1,000,000 each accident, $1,000,000 disease – each employee, and $1,000,000 disease – policy limit.

i. This requirement shall not apply to each Contractor or subcontractor that is exempt under ARS § 23-901 and when such Contractor or subcontractor executes the appropriate form (Sole Proprietor Waiver or Independent Contractor Agreement).
d. If applicable, in the University’s sole discretion, Professional Liability (Errors and Omissions Liability) of $1,000,000 minimum limits for each claim (or each wrongful act) and 2,000,000 annual aggregate.

i. In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

ii. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the scope of work of this Contract.

e. In the event that the Media Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

f. Policies for Commercial General Liability and Automobile Liability shall be endorsed to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of Contractor. Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits are in excess of those required by this Contract.

g. Policies for Commercial General Liability, Automobile Liability, and Workers Compensation shall contain a waiver of subrogation endorsement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of Contractor.

h. Such coverage shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by Northern Arizona University, the Arizona Board of Regents, or the State of Arizona shall be excess and not contributory insurance, as provided by ARS §41-621(E).

i. With the exception of ten (10) days’ notice of cancellation for non-payment of premium, Contractor’s insurance shall not be permitted to expire, be suspended, be cancelled, or materially changed for any reason without thirty (30) days prior written notice to the University.

j. Contractor will furnish the University with valid certificate(s) of insurance required by this Contract and coverage must be in effect at or prior to commencement of work under this Contract and remain in effect for the term of this Contract.
k. The University’s project or purchase order number and project description will be noted on each certificate of insurance.

l. The Certificate Holder shall be listed as “State of Arizona, Arizona Board of Regents and Northern Arizona University”.

m. Failure on the part of Contractor to maintain these requirements or provide evidence of renewal, shall constitute a material breach of this Contract upon which the University may immediately terminate this Contract, or, in the University’s sole discretion, procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by the University shall be repaid by Contractor to the University upon demand, or the University may offset the cost of the premiums against any monies due to Contractor.

n. Costs for coverage broader than those required or for limits in excess of those required shall not be charged to the University.

o. The University reserves the right to request and receive proof of insurance and/or certified copies of any or all of the above policies and/or endorsements at any time throughout the term of this Contract.

p. Contractor’s certificate(s) of insurance may include all subcontractors as insureds under its policies as required by this Contract, or Contractor will furnish to the University upon request, copies of valid certificates and endorsements for each subcontractor. Coverages for subcontractors will be subject to the minimum requirements identified above.

15. Governing Law and Venue. The Contract will be governed by the laws of the State of Arizona without regard to any conflicts of laws principles. The University’s obligations hereunder are subject to the regulations/policies of the Arizona Board of Regents. Any proceeding arising out of or relating to the Contract will be conducted in Coconino County, Arizona. Each party consents to such jurisdiction and waives any objection it may now or hereafter have to venue or to convenience of forum.

16. Public Records. The University, as a public institution, is subject to ARS §§ 39-121 to 39-127 regarding public records. Any provision regarding confidentiality is limited to the extent necessary to comply with Arizona law. prior to disclosure.

17. Interpretation-Parol Evidence. The Contract is intended by the parties as a final expression of their agreement and is intended to be a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade will be relevant to supplement or explain any term used in the Contract. Acceptance or acquiescence in a course of performance rendered under the Contract will not be relevant to determine the meaning of the Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection.
18. **Privacy: Educational Records.** Student educational records are protected by the U.S. Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g and its implementing regulations (FERPA). Contractor will not require any University students or employees to waive any privacy rights (including FERPA or the European Union’s General Data Protection Regulation (GDPR)) as a condition for receipt of any educational services, and any attempt to do so will be void. Contractor will comply with FERPA and will not access or make any disclosures of student educational records to third parties without prior notice to and consent from the University or as otherwise provided by law. If the Contract requires or permits Contractor to access or release any student records, then, for purposes of the Contract only, the University designates Contractor as a “school official” for the University under FERPA, as that term is used in FERPA.

19. **Health Insurance Portability and Accountability Act.** Contractor shall abide by all laws and regulations that protect the privacy of healthcare information to which Contractor obtains access under this Contract. Contractor and the University acknowledge that certain portions of the Administrative Simplification section of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as codified at 42 U.S.C. § 1320d through d-8, and the federal privacy regulations as contained in 45 CFR Part 164 may apply to Contractor and the University, and their relationships and operation under this Contract. If necessary, Contractor and the University will enter into a standard Business Associate Contract, and any other required Health Insurance Portability Accountability Act agreements. To the extent the terms thereof relate to Contractor’s performance under this Contract, the provisions of such Business Associate Contract shall control.

20. **Americans with Disabilities Act and Rehabilitation Act.** To the extent applicable, Contractor will comply with all applicable provisions of the Americans with Disabilities Act, the Rehabilitation Act of 1973, and all applicable federal regulations, as amended from time to time (ADA Laws). All electronic and information technology and products and services to be used by University faculty/staff, students, program participants, or other University constituencies must be compliant with ADA Laws. Compliance means that a disabled person can acquire the same information, engage in the same interactions, and enjoy the same services as a nondisabled person, in an equally effective and integrated manner, with substantially equivalent ease of use.

21. **No Waiver.** No waiver by the University of any breach of the provisions of this Contract by the Contractor shall in any way be construed to be a waiver of any future breach or bar the University's right to insist on strict performance of the provisions of the Contract.

22. **Modifications.** This Contract shall be modified or rescinded only by a writing signed by both parties or their duly authorized agents.

23. **Assignment.** Contractor may not transfer or assign the Contract or any of Contractor’s rights or obligations thereunder, either directly or indirectly, or by operation of law, without the University’s prior written consent, and any attempt to the contrary will be void.
24. **Assignment of Anti-Trust Overcharge Claims.** In actual economic practice, overcharges resulting from anti-trust violations are borne by the ultimate purchaser. Therefore, Contractor hereby assigns to the University any and all claims for such overcharges.

25. **Prices.** All Prices will be as listed in a University purchase order as set forth in Exhibit B. Unless otherwise specified in the Contract: 1) all prices are in US Dollars; 2) prices include any cost for shipping, and handling; and 3) prices will include any travel, labor, interest, import/export fees, and other costs associated with providing the Goods/Services. The University will reimburse Contractor for expenses that are specifically identified in the purchase order. To obtain reimbursement for pre-approved expenses, Contractor must submit all receipts and any required backup documentation to the University within sixty (60) days after the applicable expenses were incurred. If the University agrees to reimburse Contractor for any travel expenses, all reimbursable travel expenses must be authorized in writing by the University in advance of the planned travel and must be consistent with the University travel policy.

26. **Taxes.** Unless otherwise specified in the Contract, prices will include all taxes and fees, including, without limitation, sales, use, or excise taxes, import duties, value added taxes, permit fees, license fees, or similar charges (Taxes). Taxes do not include the University income taxes or taxes related to the University’s employees.

27. **Responsibility.** Each party is responsible for the negligent or willful acts or omissions of its employees and contractors when acting under such party’s direction and supervision. In addition, Contractor is responsible to the University for compliance with the Contract by the Contractor Parties. The University recognizes an obligation to pay attorneys’ fees or costs only when assessed by a court of competent jurisdiction. Notwithstanding the terms of the Contract or any other document, other than for employees and contractors acting under the University’s direction and supervision, the University is not responsible for any actions of any third parties, including its students.

28. **Intellectual Property Ownership.** All Intellectual Property (as defined below) that Contractor or any of the Contractor Parties make, conceive, discover, develop or create, either solely or jointly with any other person or persons including the University, specifically for or at the request of the University in connection with the Contract (Contract IP), will be owned by the University. To the extent any Contract IP is not considered work made for hire for the University (or if ownership of all rights therein does not otherwise vest exclusively in the University), Contractor hereby irrevocably assigns, and will cause the Contractor Parties to so assign, without further consideration, to the University all right, title and interest in and to all Contract IP, including all copyright rights of ownership. Intellectual Property means all the University Data, as defined below, any and all inventions, designs, original works of authorship, formulas, processes, compositions, programs, databases, data, technologies, discoveries, ideas, writings, improvements, procedures, techniques, know-how, and all patent, trademark, service mark, trade secret, copyright and other intellectual property rights (and goodwill) relating to the foregoing. Contractor will make full and prompt disclosure of the Contract IP to the University. Contractor will, and will cause the Contractor Parties to, as and when requested by the University, do such acts, and sign such instruments to vest in the University the entire right, title and interest to the Contract IP, and to enable the University to prepare, file, and prosecute applications for, and to
obtain patents and/or copyrights on, the Contract IP, and, at the University’s expense, to cooperate
with the University in the protection and/or defense of the Contract IP.

29. **Contractor’s Intellectual Property.** Contractor will retain ownership of its pre-existing
Intellectual Property, including any that may be incorporated into the Contract IP, provided that
Contractor informs the University in writing before incorporating any pre-existing Intellectual
Property into any Contract IP. Contractor hereby grants to the University a perpetual, irrevocable,
royalty-free, worldwide right and license (with the right to sublicense), to freely use, make, have
made, reproduce, disseminate, display, perform, and create derivative works based on such pre-
existing Intellectual Property as may be incorporated into the Contract IP or otherwise provided
to the University in the course of performing under the Contract.

30. **Data Use, Ownership, and Privacy.**

a. The terms of this section apply if Contractor receives, has access to, stores, or analyzes any
the University Data (as defined below). As between the parties, the University will own, or
retain all of its rights in, all data and information that the University provides to Contractor,
as well as all data and information managed by Contractor on behalf of the University,
including all output, reports, analyses, and other materials relating to, derived from, or
generated pursuant to the Contract, even if generated by Contractor, as well as all data
obtained or extracted through the University’s or Contractor’s use of such data or information
(collectively, the University Data). the University Data also includes all data and information
provided directly to Contractor by the University students and employees, and includes
personal data, metadata, and user content.

b. The University Data will be the University’s Intellectual Property and Contractor will treat it
as the University Confidential Information (as defined below). Contractor will not use, access,
disclose, or license, or provide to third parties, any the University Data, except: (i) to fulfill
Contractor’s obligations to the University hereunder; or (ii) as authorized in writing by the
University. Without limitation, Contractor will not use any the University Data, whether or
not aggregated or de-identified, for product development, marketing, profiling,
benchmarking, or product demonstrations, without, in each case, the University’s prior written
consent. Contractor will not, directly or indirectly: (x) attempt to re-identify or de- aggregate
de-identified or aggregated information; or (y) transfer de- identified and aggregated
information to any third party unless that third party agrees not to attempt re-identification or
de-aggregation. For the University Data to be considered de-identified, all direct and indirect
personal identifiers must be removed, including names, ID numbers, dates of birth,
demographic information, location information, and school information. Upon request by the
University, Contractor will deliver, destroy, and/or make available to the University, any or
all the University Data.

31. **Nondisclosure and Trade Secrets.** Contractor may receive (or has received) from the University
and otherwise be exposed to confidential and proprietary information relating to the University’s
business practices, strategies, and technologies, the University Data, as well as confidential
information of the University necessary to perform and/or provide the Services (collectively, the
University Confidential Information). University Confidential Information may include, but is not
limited to, confidential and proprietary information supplied to Contractor with the legend “the
University Confidential and Proprietary,” or other designations of confidentiality. As between Contractor and the University, the University Confidential Information is the sole, exclusive, and valuable property of the University. Accordingly, Contractor will not reproduce or otherwise use any of the University Confidential Information except in the performance or provision of the Services, and will not disclose any of the University Confidential Information in any form to any third party, either during or after the Term, except with the University’s prior written consent. Upon termination of the Contract, Contractor will cease using, and will return to the University, all originals and all copies of the University Confidential Information, in all forms and media, in Contractor’s possession or under Contractor’s control.

Contractor will not disclose or otherwise make available to the University any confidential information of Contractor or received by Contractor from any third party.

Contractor will have no obligation to maintain as confidential the University Confidential Information (other than the University Data) that Contractor can show: (i) was already lawfully in the possession of or known by Contractor before receipt from the University; (ii) is or becomes generally known in the industry through no violation of the Contract or any other agreement between the parties; (iii) is lawfully received by Contractor from a third party without restriction on disclosure or use; (iv) is required to be disclosed by court order following notice to the University sufficient to allow the University to contest such order; or (v) is approved in writing by the University for release or other use by Contractor.

Contractor warrants that it is familiar with the U.S. laws prohibiting corruption and bribery under the U.S. Foreign Corrupt Practices Act and the United Kingdom laws prohibiting corruption and bribery under the UK Bribery Act. In connection with Contractor’s work under the Contract, Contractor will not offer or provide money or anything of value to any governmental official or employee or any candidate for political office in order to influence their actions or decisions, to obtain or retain business arrangements, or to secure favorable treatment in violation of the Foreign Corrupt Practices Act, the UK Bribery Act, or any other local anti-corruption law, either directly or indirectly. Any breach of the U.S. Foreign Corrupt Practices Act, the UK Bribery Act, or other local anti-corruption law, will be a material breach of the Contract.

33. Export Controls.
If any of goods provided under the Services are export-controlled under the U.S. Export Administration Regulations, U.S. International Traffic in Arms Regulations, or through the sanctions and embargoes established through the Office of Foreign Assets Control (collectively, the Export Control Laws), Contractor will provide the University with written notification that identifies the export-controlled goods and such goods export classification. None of the work undertaken pursuant to the Contract will require either party to take or fail to take any action that would cause a violation of any of the Export Control Laws. The parties will cooperate to facilitate compliance with applicable requirements of the Export Control Laws.

34. Payment Card Industry Data Security Standard. For e-commerce business and/or credit card transactions, Contractor agrees to be bound by the requirements and terms of the Rules of all applicable Card Associations, as amended from time to time and be solely responsible
for security and maintaining confidentiality of Card transactions processed by means of electronic commerce up to the point of receipt of such transactions by Bank.

Contractor is required to be in compliance with the current or successor standard for Payment Card Industry Data Security Standard “PCI DSS”, Payment Application Data Security Standard “PA DSS” for software and PIN Transaction Security “PCI PTS” for hardware and provide attestation of compliance annually. The technical solution must include the following:

a. Contractor maintains their own network operating on their own dedicated infrastructure. Contractor’s network includes a firewall that includes access control rules that separate Contractor’s PCI network from the University and restricts any communication between Contractor’s network devices and the University systems.

b. Contractor treats the University network as an untrusted network and encrypts all cardholder data traversing the University network using industry standard encryption algorithms.

c. A system where the University has no ability to decrypt cardholder data.

Devices must be Secure Reading and Exchange of Data “SRED” and PTS 3.x compliant. Europay, MasterCard and Visa “EMV” compliance is required by October 1, 2015.

35. **Contractor Identification.** Contractor vehicles and personnel will be clearly identifiable when performing Services on University premises. Contractor’s employees shall always be in uniform with visible company identification and Contractor’s vehicles must be clearly identified with company name, phone number and or logo and with any applicable state license numbers.

36. **Parking.** Contractor shall acquire and maintain, at their sole expense, all necessary parking permits required by the University. Parking permits along with regulations governing traffic and parking are available from University Transit Services (928-523-6623) located at 113 W Dupont Ave., Flagstaff, AZ 86011. Permit applications and vehicle registration may also be accessed on-line at https://in.nau.edu/university-transit-services/. Regulations shall be applicable to all employees of Contractor and will be strictly enforced. All fines incurred shall be the sole responsibility of the Contractor.

37. **Permits.** Contractor shall acquire and maintain all necessary permits and licenses and shall adhere strictly to all Federal, State, County, or City laws, codes, regulations, and ordinances as applicable.

38. **Hazard Inspection.** University buildings have the potential to house hazards including, but not limited to hazardous building materials, chemical, biological, or physical hazards, or conditions which may become hazardous based on specific work scope or practices. Prior to commencement of any Services Contractor will review, sign, and return a University hazard inspection and communication form. Requests for inspection may be placed by any University
employee or by the Contractor at https://in.nau.edu/facility-services/asbestos-lead-and-pcbs/, or by contacting the EH&S Material Safety Office at (928) 523-6435.

39. **Non-Discrimination.** The parties will comply with all applicable laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans with Disabilities Act. If applicable, the parties will abide by the requirements of 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 or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

40. **Data Protection.** Contractor will ensure that all Services undertaken pursuant to the Contract are performed in compliance with applicable privacy and data protection laws, rules, and regulations. In addition, Contractor is responsible to the University for compliance with the Contract by all Contractor Parties. If Contractor will serve as a Processor of the University Data that includes Personal Data of Data Subjects in the European Union, Contractor will cooperate with the University to comply with the GDPR with respect to such Personal Data and Data Subjects. This includes ensuring that all Data Subjects have signed appropriate Consents and signing and complying with all documents and agreements reasonably requested by the University, including any data processing agreements. All capitalized terms in this section not otherwise defined in the Contract are defined in the GDPR.

41. **Small Business.** If subcontracting (Tier 2 and higher) is necessary, Contractor will make commercially reasonable efforts to use Small Business (SB) and Small Diverse Business (SDB) in the performance of the Services. The University may request a report at each annual anniversary date and at the completion of the Contract indicating the extent of SB and SDB participation.

42. **Third Party Arrangements.** From time to time, the University may enter into arrangements with third parties that may require Contractor to work cooperatively with and/or connect and use infrastructure with third parties. On a case-by-case basis, the University and Contractor will work cooperatively, timely, and in good faith to take such actions as may be necessary or appropriate to give effect to the University’s third-party agreements. Contractor will not be bound to terms and conditions of a third party that are different from this Contract unless expressly agreed in writing. If the third party terms and conditions conflict with this Contract’s terms, impact Contractor’s ability to meet service level agreements of this Contract, or may cause Contractor to incur additional costs, then the parties will enter into good faith negotiations for an amendment to this Contract prior to Contractor agreeing to comply with the third party terms and conditions.

43. **Gratuities.** Contractor will not give or offer any gratuities, in the form of entertainment, gifts or otherwise, or use an agent or representative of Contractor to give or offer a gratuity, to any officer or employee of the State of Arizona with a view toward securing an agreement
or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such Contract. If the University determines that the Contractor has violated this section, the University may, by written notice to Contractor, cancel the Contract. If the Contract is canceled by the University pursuant to this section, the University will be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the costs incurred by Contractor in providing gratuities.

44. **Packaging.** Contractor shall package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows: (a) Contractor's name and address; (b) the University’s name, address and purchase order number; (c) Container number and total number of containers, e.g., box 1 of 4 boxes; and (d) The number of the container bearing the packing slip. Contractor shall bear cost of packaging unless otherwise provided.

45. **Shipment Under Reservation Prohibited.** Contractor shall not be authorized to ship the goods under reservation and no tender of a bill of lading shall operate as a tender of the goods.

46. **Liens.** All goods delivered and labor performed under this Contract shall be free of all liens and, if the University requests, a formal release of all liens shall be delivered to the University.

47. **No Replacement of Defective Tender.** Every tender of goods shall fully comply with all provisions of this Contract as to time of delivery, quantity, quality, and the like. If a tender is made which does not fully conform, this shall constitute a breach and Contractor shall not have the right to substitute a conforming tender.

48. **Title and Risk of Loss.** The title and risk of loss of the goods shall not pass to the University until the University actually receives the goods at the point(s) of delivery. Prices shall be F.O.B. Destination. Contractor shall retain title and control of all goods until they are delivered, received and the Contract of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the Contractor. The Contractor shall file all claims for visible and concealed damage. the University shall notify the Contractor promptly of any damaged goods and shall assist the Contractor in arranging for inspection. Notice of rejection may be made to the Contractor at any time within one month after delivery has been made. When supported by a written statement from the University, the Contractor shall not dispute its claims of damage.

49. **Inspection.** Contractor will supply the Services to the University exactly as specified in the Contract and applicable purchase order. The Services will meet the highest and best industry practices. The University will have the right to inspect any Services prior to and a reasonable amount of time after delivery. If the University determines that any Services are incomplete, defective, or not in compliance with the specifications or other requirements of the Contract, the University may reject such Services in whole or in part.
50. **Warranties.** In addition to any implied warranties, Contractor warrants to the University that: 1) the Services will be free from any defects in design, workmanship, materials, or labor; 2) all of the Services will be performed in a professional and workmanlike manner and in conformity with highest and best industry standards by persons reasonably suited by skill, training and experience for the type of services they are assigned to perform; 3) Contractor will comply, and will be responsible for ensuring Contractor Parties comply with all applicable laws, rules, and regulations, including any policies of ABOR and the University, in the performance of the Contract; 4) Contractor owns or has sufficient rights in the Services that they do not infringe upon or violate any intellectual property of any third parties, and are free and clear of any liens or encumbrances; 5) any data, code, or software developed or delivered by Contractor to the University will not contain any viruses, worms, Trojan Horses, or other disabling devices or code; 6) all sensitive data, personal data, and personally identifiable data, as those terms may be defined in applicable laws, rules and regulations (PII) provided by Contractor to the University was obtained legally and Contractor has obtained all requisite permissions from the individuals whose PII is being provided for (a) Contractor to provide the PII to the University, and (b) the University to use the PII for the purposes and in the jurisdictions set forth in the Contract; 7) the prices of Services in the Contract are the lowest prices at which these or similar goods or services are sold by the Contractor to similar customers in similar quantities. In the event of any price reduction between execution of the Contract and delivery of the Services, the University shall be entitled to such reduction, and 8) all Services delivered by Contractor will conform to the specifications, drawings, and descriptions set forth in the Contract and applicable purchase order, and to any samples furnished by Contractor. In the event of a conflict among the specifications, drawings, samples, and description, the specifications will govern.

51. **Sales and Use Tax.** The Contractor shall comply with and require all Contractor Parties to comply with all the provisions of the applicable state and sales excise tax law and compensation use tax law and all amendments to same. The Contractor further agrees to indemnify and save harmless the University, of and from any and all claims and demands made against it by virtue of the failure of the Contractor or any Contractor Party to comply with the provisions of any or all said laws in amendments. the University is not exempt from state sales excise tax and compensation use tax.

52. **Changes.** Within the limits allowed by law, Contractor agrees that the University may order additional services, or make changes by altering, adding to, or deducting from the proposed Services, the Contract sum being adjusted accordingly, and Contractor shall enter into a modification of the Contract to reflect said changes.

53. **Price Adjustment.** Price changes shall only be considered at the end of one Contract period and the beginning of another. Price change requests shall be supported by evidence of increased costs to the Contractor. The University shall not approve price increases that shall merely increase the gross profitability of the Contractor at the expense of the University. Price change requests shall be a factor in the Contract extension review process. The University shall determine whether the requested price increase or an alternate option shall be in the best interest of the University.
54. **Service Marks and Trademarks.** For purposes of this provision, the phrase "the University Mark" means any trade name, trademark, service mark, logo, domain name, and any other distinctive brand feature owned or used by the University. Contractor agrees to comply with the University’s trademark licensing program concerning any use or proposed use by Contractor of any of the University Mark on goods, in relation to Services, and in connection with advertisements or promotion of Contractor or its business. Except as expressly authorized in this Contract, Contractor is not permitted to use any the University Mark without prior written approval of the University. Prior to any use of any the University Mark by Contractor or its affiliates or successors or assigns, Contractor will comply with the University’s Licensing Policy [http://nau.edu/licensing](http://nau.edu/licensing).

55. **Advertising/Publishing.** Contractor shall not advertise or publish, without the University’s prior consent, the fact that the University had entered into this Contract, except to the extent necessary to comply with proper request for information provided by appropriate statutes.

56. **Weapons.** The University prohibits the use, possession, display, or storage of any weapon, explosive device, or fireworks on all land and buildings owned, leased, or under the control of the University or its affiliated or related entities, in all the University residential facilities (whether managed by the University or another entity), in all the University vehicles and at all the University or the University-affiliate sponsored events and activities, except as provided in §12-781 of the Arizona Revised Statutes or unless written permission is given by the University Police Department. Notification by Contractors to all persons or entities who are employees, officers, subcontractors, Contractors, agents, guests, invitees, or licensees of Contractor Parties of this policy is a condition and requirement of the Contract. Contractor further agrees to enforce this contractual requirement against all Contractor Parties.

57. **Tobacco Free.** The University recognizes that tobacco use is a public health hazard and is dedicated to providing a healthy, comfortable and productive living, learning and working environment. Use of all tobacco products, including those not approved by the FDA for cessation is prohibited on the University property, facilities, grounds, parking structures, the University-owned vehicles and structures owned or leased by the University. This includes, but is not limited to, the use of cigarettes, e-cigarettes, hookah, e-hookah, chew, dip, snuff, cigars, pipes, vaporizers, etc. For additional information, go to [http://nau.edu/Tobacco-Free/Policy/](http://nau.edu/Tobacco-Free/Policy/).