



October 12, 2023

REQUEST FOR PROPOSAL

ENERGY ADVISOR

RFP P24DC001

DUE: 3:00 P.M., MST, October 26, 2023

Deadline for Inquiries

3:00 PM., MST, October 18, 2023

Time and Date Set for Closing

3:00 PM., MST, October 26, 2023

## **RFP SECTION INDEX**

<b>SECTION #</b>	<b>TITLE</b>
1.0	INTRODUCTION
2.0	DEFINITIONS
3.0	INSTRUCTIONS TO PROPOSERS
4.0	SCOPE OF WORK
5.0	PRICING
6.0	QUALIFICATIONS/FINANCIAL STATEMENTS
7.0	RFP PROCESS
8.0	EVALUATION CRITERIA
9.0	CONTRACT TERMS AND CONDITIONS
10.0	CERTIFICATIONS AND FORMS

## **EXHIBITS**

EXHIBIT 1	PROPOSAL FORMAT
EXHIBIT 2	PRICING PROPOSAL
EXHIBIT 3	CERTIFICATIONS
EXHIBIT 4	FORM OF AGREEMENT
EXHIBIT 5	TERMS AND CONDITIONS

## 1. INTRODUCTION

- 1.1. University Background. The University is a fully accredited State of Arizona institution of higher education. Additional information on the University is available at the following link <https://nau.edu/Institutional-Research/Quick-Facts/>.
- 1.2. Proposal Background
  - 1.2.1. The University is requesting sealed Proposals from qualified Proposers for an Energy Advisor to provide services to assist the University in reaching carbon neutrality for purchased electricity through the procurement of Renewable Energy (RE) through a Virtual Power Purchase Agreement (VPPA).
  - 1.2.2. This RFP is part of a competitive negotiation process intended to allow the University to obtain goods and/or services as outlined herein in a manner that is most advantageous to the University. This RFP provides the University the flexibility to negotiate with Proposers, if desired, to arrive at a mutually agreeable relationship. Price may weigh heavily in the evaluation process but will not be the only factor under consideration and may not be the determining factor. All Proposals will be considered public records and will be available for review, as allowed by Arizona law and the Code.
  - 1.2.3. It is the University's intent to select the Proposal(s), which are most favorable to the University in all respects, including scope, availability of services, quality of services, reputation, and price. If not otherwise stated herein, multiple Awards may be made or an Award(s) may be made partial, by part, by line item, or by any combination of parts if identified as being in the best interest of the University.
  - 1.2.4. The initial Contract term will be for one (1) year(s) with the possibility to renew a four (4) successive one (1) year renewals, for a total term not to exceed five (5) years.
- 1.3. Coverage and Participation. Unless objection is submitted with the Proposal, it is the intent of the University that any Award resulting from the RFP be available for use by all departments of the University and any other Arizona University, along with any other educational institution or Governmental entities, to the extent allowed by Arizona law and the Code.
- 1.4. Communications. All questions or inquires relating to this RFP must be directed to:  

Debra Cisneros, Director of Purchasing  
Debra.Cisneros@nau.edu  
Direct Line: 928-523-5285

## 2. DEFINITIONS

Capitalized terms shall have the meaning set forth in Board Policy 3-801.B <https://public.azregents.edu/Policy%20Manual/3-801-General%20Provisions.pdf>, with the exception of the following terms which shall have the meanings set forth below in this RFP.

- 2.1. “May” or “Should” indicates something that is not mandatory but permissible/desirable. If a Proposer fails to provide recommended information, the University may, at its sole option, ask Proposer to provide the information or evaluate the Proposal without the information.
- 2.2. “Must,” “shall,” “will” indicates a mandatory requirement. Failure to meet any mandatory requirements may result, in the University’s sole discretion, in the rejection of your proposal.
- 2.3. “MST” means Mountain Standard Time, the time zone in which the University operates. Arizona does not observe Daylight Savings Time.
- 2.4. “Proprietary Information” means trade secrets and other proprietary or confidential information exempt from Arizona’s Public Records Statute pursuant to A.R.S. § 15-1640(A). Contract terms and conditions, pricing, and information generally available to the public are not considered Proprietary Information under the Code (*See* Code § 3-801(D)(1)).
- 2.5. “RE” refers to Renewable Energy.
- 2.6. “REC” refers to Renewable Energy Credit.
- 2.7. “RFP” refers to this request for proposals P24DC001.
- 2.8. “Successful Proposer” means any Proposer selected by the University to receive an Award as a result of this RFP and to enter into a Contract to provide the University with the products or services sought by this RFP.
- 2.9. “VPPA” refers to Virtual Power Purchase Agreement.

### **3. INSTRUCTIONS TO PROPOSERS**

#### **3.1. General Requirements.**

- 3.1.1. The data, specifications, and requirements outlined herein are intended to serve as a general guideline for the University's requirements. Proposers should submit a fully detailed Proposal that adequately describes the advantages and benefits to the University. Proposers should provide a detailed response to each requirement in this RFP, individually numbered to match each requirement. At a minimum, in such case where a detailed response is not applicable, each Proposer should indicate their ability to comply with and/or agreement to the requirements of this RFP. Proposers are encouraged to provide any additional information that is not specifically identified in this RFP that would assist the University in making its evaluations based upon the disclosed evaluation criteria.
- 3.1.2. Any Person submitting a Proposal shall be deemed to have read and understand all the terms, conditions and requirements in this RFP.
- 3.1.3. The Contracts, Purchasing and Risk Management department shall retain this RFP, and all related terms and conditions, exhibits and other attachments, in original form in an archival copy. Any modification of these, in the Proposer's submission, is grounds for immediate disqualification.
- 3.1.4. Proposer agrees that the University will not pay for or be responsible for any cost or expense incurred by Proposer in the preparation, submission, presentation, or any other action connected with proposing or otherwise responding to this RFP.
- 3.1.5. The University reserves the right to reject any or all Proposals or any part thereof, or to accept any Proposal, or any part thereof, or to withhold the Award and to waive or decline to waive irregularities in any Proposal when it determines that it is in its best interest to do so. The University also reserves the right to hold all Proposals after the Opening date and the right to accept a Proposal not withdrawn before Opening.
- 3.1.6. Proposer may withdraw their Proposal any time prior to Opening. Proposer may request to withdraw their Proposal after Opening and any time prior to selection and notice of Award. The University shall have sole authority to grant or deny such a request. In the event the University grants such a request, it may withhold issuing future Requests for Proposals to such Proposer.
- 3.1.7. All Proposals and accompanying documentation will become the property of the University at the time the Proposals are opened. It will be the Proposer's responsibility to request that samples be returned to the Proposer and provide a method for doing so at the expense of the Proposer. If such a request is not received and a method of return is not provided, all samples shall become the property of the University forty-five (45) days from the date of Award and may be disposed of in the University's sole discretion.

- 3.1.8. Collusion with other Proposers or employees thereof, or with any employee of the University, is prohibited and may result in disqualification of the Proposer and/or cancellation of an Award. Any attempt by the Proposer, whether successful or not, to subvert or skirt the principles of open and fair competition may result in disqualification of Proposer and/or cancellation of an Award.
- 3.1.9. Each Proposer shall ensure that no improper, unethical, or illegal relationships or conflict of interest exists between or among the Proposer, the University, and any other party to this RFP. Without limiting the foregoing, Proposer shall refrain from offering or giving gratuities, in the form of entertainment, gifts or otherwise, to any officer or employee of the State of Arizona with a view toward securing a Contract 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. The University reserves the right to determine the materiality of such relationships, when discovered or disclosed, whether intended or not; and to decide whether or not Proposer disqualification and/or cancellation of an Award shall result.
- 3.1.10. If any Proposer or any of the Proposer's employees, agents, or other representatives participating in this RFP need, or have questions about the University's accommodations for people with disabilities, arrangements can be made by contacting Debra Cisneros at telephone 928-523-5285 email address – Debra.Cisneros@nau.edu. Such requests should be made as early as possible to allow time to arrange the accommodation(s).
- 3.1.11. The University shall have the right to use any ideas that are contained in any Proposal received in response to this RFP, along with any adaptation of such ideas. Selection or rejection of the Proposal shall not affect the University's right of use. Provided, however, that the University will, in good faith, honor the proprietary and confidential nature of any Proposer information that is enclosed in a separate envelope from the Proposal and clearly designated and conspicuously labeled as set forth in Section 7.5.9 of this RFP.
- 3.1.12. Any protest of this procurement must comply with the requirements of section 3-809(B) of the Code.
- 3.1.13. Proposer 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 in performing any work under this RFP.
- 3.1.14. The University is under no obligation whatsoever to honor or observe any information that may apparently conflict with any provision of this RFP, regardless of whether such information is obtained from any office, agent, or employee of the University. Such information shall not affect the Proposer's risks or obligations under a Contract resulting from this RFP.
- 3.1.15. Any Proposer exception, stipulation, counter-offer, requirement, and/or other alternative term or condition shall be considered rejected unless specifically

accepted in writing by the University and thereafter incorporated into any Contract resulting from this RFP.

- 3.2. Attention to Terms and Conditions. Proposers are cautioned to thoroughly understand and comply with all matters covered under the Terms and Conditions section of this RFP. The Successful Proposer is expected to enter into the form of agreement approved by the Board, refer to Section 9. The University terms and conditions included in this RFP, are intended to be incorporated into the Contract. **Proposals that are contingent upon any changes to these mandatory terms and conditions may be deemed to be non-responsive and may be rejected. Proposals must state any exceptions taken to the mandatory terms and conditions in detail.**
- 3.3. Project Resources.
  - 3.3.1. The Successful Proposer shall be required to provide the personnel, knowledge, and experience required to maintain an appropriate level of professionalism and coverage for performance of requirements outlined herein. The University reserves the right to review Proposer's staff assigned to the University for relevant qualifications and experience.
  - 3.3.2. Proposals shall include a list of proposed personnel with resumes specifying qualifications and relevant experience. Describe assignment of account representatives and/or key personnel.
  - 3.3.3. Proposer will be required to conduct relevant and appropriate background checks and fingerprinting according to the [University's policies](#) on all assigned employees and new hires to ensure that it does not assign any employee or agent to the University who may reasonably be considered to pose a threat to the safety or welfare of the University community or its property. Proposer will share background check information and other supporting documentation including disciplinary action for any employee, upon written request by the University.
  - 3.3.4. Proposer may subcontract services with prior University authorization. Proposal shall list and describe any subcontractor's qualifications and relevant experience and describe how Proposer guarantees subcontractor performance. The Successful Proposer shall remain solely responsible for the performance of a resulting Contract from this RFP. All University payments for goods and/or services shall be made directly to the Proposer.
  - 3.3.5. The University reserves the right to inspect Proposer's facilities prior to Award or any time throughout the term of the Contract.
- 3.4. Small Businesses. The University is committed to the development of Small Business and Small Disadvantaged Business ("SB & SDB") suppliers. If subcontracting (Tier 2 and higher) is necessary, Proposer (Tier 1) will make commercially reasonable efforts to use SB & SDB in the performance of any Contract resulting from this RFP. Proposals should include a description of the

Proposer's efforts to solicit SB & SDB participation in providing the services.

#### 4. SCOPE OF WORK

The Energy Advisor will be responsible for identifying viable and high value Renewable Energy (RE) projects, assist in aggregation with other identified partners to improve project economics, identifying high value potential RE projects, evaluating project VPPA market risk, analyzing and supporting mitigation of potential financial risks and returns, providing the University with Request for Proposal (RFP) technical specifications, and supporting an RFP process to evaluate, negotiate and contract a VPPA. The University would also consider pricing options to compensate services with a transaction fee and/or consulting fee. The University would be interested in pricing for post contract work for hourly pricing verification, monthly settlement verification, renewable energy credit (REC) and emissionality tracking plus results reporting. The Energy Advisor will be responsible for effectively communicating with the University's leadership and stakeholders.

The University electric consumption is about 65,000 MWh annually with identified aggregation partners demand exceeding 500,000 MWh annually.

The University leadership has prioritized the criteria for potential projects for a VPPA as follows: economics, avoided emissions/additionality, market risk, positive tribal and/or social impact, academic enrichment, and location.

##### Background

As part of President Dr. José Luis Cruz Rivera declaration of climate emergency and NAU's 2030 carbon neutrality commitment, the University aims to reduce its environmental impact by procuring renewable electricity and the associated renewable energy credits. [Climate Action Plan](#)

The Energy Advisor will address our need to eliminate Scope 2 emissions. Scope 2 GHG emissions from our 2022 purchased electricity from Arizona Public Service (APS) of 64,090,291.10 kWh is approximately 27,725 MTCO<sub>2e</sub>, representing approximately 54% of Scope 1 and 2 GHG emissions. APS is not under any Arizona Corporation Commission renewable energy standard to decarbonize its power supply by a particular date. APS has set a corporate goal of carbon neutrality no later than 2050.

The University has initiated aggregation partnership conversations with local governmental entities with similar carbon neutrality goals to participate in this VPPA. Each governmental entity is seeking solutions for purchased electricity emissions and are interested in aggregation and participation in a VPPA. These include the City of Flagstaff (58,000 MWh/annually), the City of Sedona (4,000 MWh/annually), City of Phoenix (400,000-600,000 MWh/annually) and Arizona State University (40,000 plus MWh/annually).

To accomplish this goal of eliminating Scope 2 emissions, the University is seeking Proposals for an experienced and qualified renewable Energy Advisor to guide and support the University in procuring renewable energy through an aggregated VPPA. The Energy Advisor should possess expertise and demonstrated experience in locating viable

projects, accessing project databases, analyzing options, facilitating aggregation partnerships, negotiating favorable terms, drafting specifications for procurement documents, reviewing Request for Proposal (RFP) responses, and effectively communicating with leadership and stakeholders. The University prefers facilitating the formation of new developments and is not interested in buying into existing systems.

#### 4.1. Partner Aggregation

- 4.1.1. Describe ability, methods, and experience to identify and engage potential partners for project aggregation, aiming to maximize the purchasing power and benefits to the University.
- 4.1.2. Describe ability to evaluate potential partners' capabilities, experience, and track record in renewable energy project aggregation.
- 4.1.3. Describe ability and experience to facilitate partnerships and negotiations with aggregation partners on behalf of and in collaboration with the University.

#### 4.2. Financial Feasibility Analysis

- 4.2.1. Describe ability, methods, and experience to perform detailed financial analysis and modeling for VPPA.
- 4.2.2. Describe ability and experience to evaluating and comparing the financial benefits, risks, and long-term cost or savings associated with different procurement strategies.
- 4.2.3. Describe ability to provide recommendations that reduce the risk and ensure the best financial outcome for the University.

#### 4.3. Negotiations and Contracting

- 4.3.1. Describe ability and experience assisting in developing negotiation strategies and tactics to secure favorable VPPA.
- 4.3.2. Describe ability to support the University in negotiations with renewable energy project developers, utilities, and other possible stakeholders.
- 4.3.3. Describe ability and experience reviewing and make recommendations to the University regarding contract agreements.

#### 4.4. Request for Proposals

- 4.4.1. Describe the ability and experience collaborating with University's Purchasing Department to develop specifications for a Request for Proposal (RFP), Request for Information (RFI) and/or a Request for Qualifications (RFQ).

4.4.2. Describe the ability and experience reviewing and evaluating bid responses to ensure compliance with the proposal specification.

4.4.3. Describe ability and experience providing high-level recommendations to the leadership and stakeholders to support carbon neutrality and financial goals.

4.5. Communication

4.5.1. Describe how Awarded Proposer will communicate often and effectively providing updates on project/s progress, opportunities and challenges.

4.5.2. Describe how Awarded Proposer will prepare and provide clear and concise reports, presentations, and recommendations.

4.5.3. Describe how Awarded Proposer will collaborate with the University's staff to ensure alignment with the University's strategic objectives.

4.6. Qualifications

4.6.1. Describe knowledge and experience with the electrical sector, wholesale power markets, renewable energy technologies and developers, renewable energy trends and market opportunities and challenges, pricing structures, regulatory environment, transmission and permitting challenges, evaluating actual emissions reductions from RE development, and sustainability practices.

4.6.2. Describe knowledge and experience with the challenges and opportunities associated renewable electricity development including state policy and dynamics, federal policy dynamics affecting wholesale renewable energy markets and identifying projects likely to be strong market performers.

4.6.3. Describe prior experience working with universities, educational institutions, or similar public institutions specifically in the areas of aggregation and negotiating and closing of VPPAs.

4.6.4. Describe Proposer's proven track record of successfully assisting universities or similar organizations in facilitating aggregation partnerships for the successful closing of VPPAs with strong financial performance.

4.6.5. Describe Proposer's financial analysts and staff to conduct financial modeling and assess project viability and risks. Proposer to be capable of evaluating the financial implications of different strategies, calculating return on investment, and guiding the university in making financially sound decisions.

4.6.6. Describe experience to facilitating workshops, presentations, and training sessions to educate and involve staff, faculty, and students in decarbonization and renewable energy initiatives.

4.6.7. Describe experience with industry connections that can bring valuable partnerships and resources with renewable energy developers, transmission authorities, utilities, financing institutions, and other relevant stakeholders.

4.6.8. Describe experience with post VPPA services such as hourly pricing verification, monthly financial settlements and REC management.

4.7. Warranties.

4.7.1. Each Proposal shall state the warranties to be offered by Proposer.

4.7.1.1. Unless stated elsewhere in this RFP, University expects that Proposer will provide the following warranties, at a minimum: (i) that all of the Contract services will be performed in a professional and workmanlike manner and in conformity with industry standards by persons reasonably suited by skill, training and experience for the type of services they are assigned to perform; (ii) that the Successful Proposer will comply, and will be responsible for ensuring its owner, members, employees, agents, contractors and subcontractors comply, with all applicable federal, state and local laws in the performance of a resulting Contract; (iii) that the Successful Proposer owns or has sufficient rights in all services to be delivered by the Successful Proposer, and the services delivered by the Successful Proposer will not infringe upon or violate any Intellectual Property of any third parties; and (vi) that in addition to any implied warranties, all services delivered by the Successful Proposer will conform to the specifications and descriptions created therefor.

4.8. Additional Services. Proposer may offer additional services not specifically requested in this RFP, including associated costs. The University shall determine, in its sole discretion, which additional service options are the most beneficial from both a cost and service standpoint and may further negotiate these options to include or omit, at any time throughout the Contract or any renewal term, dependent on the needs of the University.

4.9. Quality Assurance Plan. Proposals shall provide a quality assurance plan that details the methods by which the Proposer guarantees performance.

4.10. Sustainability.

Proposer to describe commitment to sustainability and climate action goals.

## 5. PRICING AND PAYMENT

- 5.1. Proposer shall submit a detailed cost proposal in the format found in Exhibit 2 to include all aspects of providing the scope of work associated with this RFP.
- 5.2. Any pricing and/or revenue offerings in a Proposal may be considered a final offer by the University, whether stated as amounts or percentages, and/or whether or not offered on an all-or-none basis, unless otherwise specified in the Proposal. The University may accept or reject in part or entirely a Proposal's pricing and/or revenue offerings, unless otherwise specified in the Proposal. A Proposal's pricing and/or revenue offering may not be modified after Opening unless the University, at its sole discretion, permits such modification. The University may reject any Proposal in which the pricing and/or revenue offering does not conform to the prescribed manner and method in this RFP.
- 5.3. Method of Payment & Discount for Early Payment. The University's preferred method of payment is via credit card. Each Proposal shall indicate whether Proposer will:
  - 1) Accept payment via credit card at the time of purchase without assessing credit card fees;
  - 2) Offer an early payment discount (and describe the offering);
  - 3) Offer an early payment discount if paid via credit card;
  - 4) Accept payment via a Single Use Account when the invoice is processed through Accounts Payable. A Single Use Account is a card-based payment solution that acts like a check by providing a 16-digit virtual account number for each payment.

6. **QUALIFICATIONS/FINANCIAL STATEMENTS** The University is soliciting Proposals from Persons which are in the business of providing services as listed in this RFP. Failure to include any requested information may be grounds for rejection of the Proposal.
- 6.1. Prior Experience. Proposals shall present a corporate history/management summary and evidence that the Proposer and/or its officers have been engaged for a minimum of five (5) years in providing similar products and services as described herein. Proposer may also describe Proposer's growth for the past three (3) years.
- 6.1.1. Describe any restructuring, mergers, and/or downsizing that has occurred over the past three (3) years or is anticipated in the next two (2) years.
- 6.1.2. Detail Proposer's experience with similar/like projects, similar to those of the University.
- 6.2. Financial Statements. Proposals to include:
- 6.2.1. Proposers who have audited financial statements are to provide audited financial statements for the two (2) most recent available years. If the financial statements are intended to be confidential, submit one (1) copy in a separate sealed envelope, marked prominently with the Proposer's name and the phrase, "Confidential – Financial Statements."
- 6.3. Disputes/Litigation.
- 6.3.1. Describe the material issues of any current patent or copyright lawsuits or any other legal actions against Proposer including, but not limited to, parties of dispute, description of technology involved, equipment affected, jurisdiction, and date of legal complaint.
- 6.3.2. Describe litigation disputes for the past 5 years related to similar projects or Proposer's ability to perform.
- 6.4. Proposer References.
- 6.4.1. Provide, at minimum, three (3) references, not including the University, identifying firms with requirements similar to those of the University. Provide the name of the firm, contact person, email and the telephone number.
- 6.4.2. The University may, but is not required to, contact the provided references and/or additional references not provided by Proposer. The University may give preference to those references that are most similar to the University.

## 7. RFP PROCESS

- 7.1. Intent / Right to Terminate and Recommence RFP Process. The University intends to enter into a Contract with one or more Proposers whose Proposal(s) are considered to be in the best interests of the University. However, the University may terminate this RFP process at any time up to notice of Award, without prior notice, and without liability of any kind or amount. Further, the University reserves the right to commence one or more subsequent RFP processes seeking the same or similar products or services covered hereunder.
- 7.2. Communications Regarding the RFP.
- 7.2.1. No department, school, or office at the University has the authority to solicit or receive official Proposals other than Contracts, Purchasing and Risk Management. All solicitations are performed under the supervision of the Chief Procurement Officer and in accordance with University policies and procedures.
- 7.2.2. Any and all questions regarding this RFP shall be directed to the Purchasing unit of Contracts, Purchasing and Risk Management and to no other office or individual at the University. Any Proposer who improperly attempts to communicate with unauthorized University personnel regarding the RFP may face disqualification at the discretion of the University.
- 7.2.3. All formal inquiries or requests for significant or material clarification or interpretation, or notification to the University of errors or omissions relating to this RFP must be in writing, and directed by email to: Debra.Cisneros@nau.edu. All formal inquiries must be submitted at least ten (10) calendar days before the time and date set for closing this RFP. Failure to submit inquiries by this deadline may result in the inquiry not being answered. Addenda will be posted to the University's bid board at <https://in.nau.edu/contracting-purchasing-services/nau-bid-board/>, it is the responsibility of the Proposer to obtain any addenda to this RFP. Failure to receive addenda shall not constitute a basis for claim, protest, or reissuance of the RFP.
- 7.2.4. The University may answer informal questions orally. The University makes no warranty of any kind as to the correctness of any oral answers and uses this process solely to quickly provide minor clarifications. Oral statements or instructions shall not constitute an addendum to this RFP. Proposer shall not be entitled to rely on any verbal response from the University.
- 7.3. Schedule of Events. The following is the schedule that will apply to this RFP but may change in accordance with the University's needs.

Thursday, October 12	Issuance of RFP
Wednesday, October 18	Technical Questions/Inquiries due no later than 3:00 PM/MST
Thursday, October 26	RFP is Due no later than 3:00 PM, MST
Week of November 6 <sup>th</sup>	Proposer Presentations, (if necessary)

Thursday, November 16  
Wednesday, November 22

Complete Evaluations  
Award Notification

7.4. Submitting Proposals.

7.4.1. All Proposals shall be submitted, and all communications with University shall be made in accordance with the terms of this RFP.

7.4.2. Proposals are to be addressed and delivered Northern Arizona University, Contracts, Purchasing and Risk Management, Attention Becky McGaugh at 545 E. Pine Knoll Drive, building 98B, Flagstaff, Arizona 86011 on or before Thursday, October 26, 2023 on or before 3:00 PM/MST at which time a representative of University will announce publicly the names of those firms or individuals submitting Proposals. No Proposals will be accepted after this time. No other public disclosure will be made regarding the RFP until after issuance of a notice of intent to Award or notice of Award of the Contract. No telephone, electronic or facsimile proposals will be considered. Conditional Proposals shall not be considered. If responding by United States Postal Services mail, allow additional time for on-campus delivery. Proposals will be opened at the Zoom meeting identified below. **Proposals received after Opening will be returned to the Proposer unopened.**

Zoom Bid Opening:

Link: [Bid Opening Zoom Link](#)

Topic: P24DC001 Energy Advisor

Day and Time: Thursday, October 26, 2023, 03:00 PM/MST

Password: P24DC001

Meeting ID: 840 8948 8505

Dial by your location

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 669 444 9171 US

7.4.3. Proposal shall be submitted in the format shown in Exhibit 1. Proposals in any other format may be rejected. Proposals should be organized in a manner that will facilitate the University's evaluation]. Proposals should include page numbers. The University reserves the right to reject, without prior notice, any Proposal that it deems overly complex, disorganized, or difficult to evaluate. The University reserves the right to make such a decision without any input or communication from any other party.

- 7.4.4. The University may, at its sole option, ask the Proposer to provide information that is not included in the Proposal or evaluate the Proposal as submitted.
- 7.4.5. Proposals shall be signed by an individual with authority to bind the Proposer. The University may reject any Proposal if it is not signed as indicated and/or required by the areas, spaces, or forms provided within this RFP.
- 7.4.6. Proposers are to submit one (1) original Proposal to the University, in hardcopy form, along with [1] copy(s) in electronic form, on a CD, flash drive or other removable storage device, in either Microsoft Word or as an Adobe PDF file.
- 7.4.7. Proposals must be submitted in a **marked and sealed container** (e.g. an envelope or box) and the exterior of the container must clearly and conspicuously display the following identifying information in addition to any other information otherwise required for transmittal: 1) the Name of the Proposer; 2) Title of Proposal; 3) RFP Number; and 4) Date and Time Proposals are Due.
- 7.4.8. Proposer is encouraged to use recycled paper and double-sided copying for the production of all printed and photocopied Proposal documents.
- 7.4.9. As a public institution that is subject to Arizona's Public Records laws, the University discourages Proposers from submitting confidential and/or proprietary information to the University. If the Proposer needs to submit confidential or proprietary information with its Proposal, the Proposer must submit such information in a separate envelope from the Proposal and clearly and conspicuously mark the submittals as "Confidential/Proprietary Information." The University will have sole discretion to determine whether any submitted information is actually confidential and/or proprietary. The envelope must also contain the reason(s) why the enclosed material is to be considered confidential or proprietary if deemed confidential by the University. Trade secrets or other proprietary data contained in the proposal documents shall be maintained as confidential in accordance with procedures promulgated by the Procurement Officer and subject to limitations in Arizona or Federal law. Contract terms and conditions, pricing, and information generally available to the public are not generally considered confidential information. Any watermarks, footnotes, or reference to confidential and/or proprietary throughout the Proposal will be disregarded as boilerplate markings.

7.5. Discussions with Proposers.

- 7.5.1. Following the opening of the Proposals, the University may conduct Discussions, including oral in-person presentations, with Responsible Proposers whose Proposals are determined, by the University, to be reasonably susceptible to being selected for Award. The University also reserves the right to select the most Responsive and Responsible Proposer(s) without further discussion, negotiation, or prior notice. The University may presume that any Proposal is a best-and-final offer.

- 7.5.2. During Discussions provided for by Section 7.6.1, the University may accept revisions of Proposals and negotiate price changes. Selected Proposers participating in Discussions shall be accorded fair treatment with respect to any opportunity for Discussions or revisions of Proposals. If revisions are permitted, all selected Proposers will be invited to submit a final Proposal revision.
- 7.5.3. During any Discussion period, the University will not disclose any information derived from Proposals submitted, or from Discussions with other Proposers. Once a Contract is executed, the RFP file, and the Proposals contained therein, are in the public record and will be disclosed upon request.
- 7.5.4. After determining the Proposal(s) that is the most advantageous to the University, the University reserves the right to negotiate, prior to Award, with such Proposer(s) to finalize the terms of the Contract, resolve minor errors, clarify necessary details or responsibilities, obtain the lowest and best pricing, or otherwise as necessary to finalize the Contract.
- 7.5.5. Notification of Non-Selection. The University reserves the right not to notify Proposers not selected for further consideration or Award. The University may, in its sole discretion, post Awards to its website.

## 8. EVALUATION CRITERIA

- 8.1. Selection of Successful Proposer. The Award shall be made to the Responsible Proposer whose Proposal is determined to be the most advantageous to the University based on the evaluation factors set forth in this RFP. Price, although a consideration, will not be the sole determining factor.
- 8.2. Criteria. The evaluation of Proposals will be based on the following criteria with the indicated points possible for each category:
  - 8.2.1. Proposer's Qualifications, Project Resources, Client References (refer to Section 6).

Points: 40
  - 8.2.2. Scope of Work (refer to Section 4)

Points: 30
  - 8.2.3. Pricing (refer to Section 5).

Points: 20
  - 8.2.4. Exceptions to the Terms and Conditions of the RFP (refer to Section 3.2).

Points may or may not be assigned to this category, however Proposals that are contingent upon changes to the University's terms and conditions may, if the University at its sole discretion determines not to accept the alternate terms and conditions, be considered non-responsive.

No Point Assigned
  - 8.2.5. Overall responsiveness to RFP.

Points: 10

## 9. CONTRACT TERMS AND CONDITIONS AND INSURANCE

The University will require the Successful Proposer to sign the form agreement set forth in Exhibit 4 hereto. Proposals that are contingent upon any changes to these mandatory terms and conditions, and insurance requirements may be deemed to be non-responsive and may be rejected. **Proposals must state, in detail, any exceptions taken to the terms and conditions included in the form agreement in Exhibit 4.**

## **10. CERTIFICATIONS AND FORMS**

Each Proposal must include the following certifications and forms signed by an individual with authority to bind the Proposer. University forms of certification are attached as Exhibit 3. Failure to include any of the following certifications may result in the Proposal being rejected as nonresponsive.

10.1. Certification of Proposal

10.2. Anti Lobbying Certification

10.3. Federal Debarred List Certification

10.4. Proposer Information

## **EXHIBIT 1 – PROPOSAL FORMAT**

In order to facilitate direct comparison, submit Proposal using the following format, listed in order, and index tabbed to match. Failure to follow instructions regarding format may result in rejection of Proposal. Proposal to be limited to ten (10) pages for responses to numbers 7, Section 4. Include the following with Proposal:

1. Completed and signed RFP Certification (refer to Exhibit 3).
2. Completed and signed Anti-Lobbying Certification (refer to Exhibit 3).
3. Completed and signed Federal Debarred List Certification (refer to Exhibit 3)
4. Proposer's Qualifications and Experience (refer to Section 6.).
5. Project Resources (refer to Section 3.3).
6. Client References (refer to Section 6.4).
7. A detailed technical Proposal (refer to Section 4).
8. Exceptions to the Terms and Conditions of the RFP (refer to Section 3.2).
9. Pricing Proposal (refer to Section 5).
10. Proposer Information (refer to Exhibit 3).

## **EXHIBIT 2-PRICING PROPOSAL**

### 1. Proposer to provide one or more Pricing Proposals.

#### 1.1. Upfront Cost Option

1.1.1. Proposer may submit a detailed cost proposal to include all aspects of providing the scope of work associated with this RFP.

#### 1.2. No Upfront Cost Options

1.2.1. Advisor to be paid by the Developer after fully executed contract. Include details on this pricing model.

1.2.2. Transaction/Success Fee: Offtake volume pricing. Include details on this pricing model.

#### 1.3. Post Contracting Costs

1.3.1. Hourly Pricing Verification

1.3.2. Monthly Settlement Verification

1.3.3. Renewable Energy Credit (REC) Management and Value Tracking

### 2. Travel

To obtain reimbursement for pre-approved travel, Successful Proposal 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 the Successful Proposer 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](#).

**EXHIBIT 3 – CERTIFICATIONS**

## REQUEST FOR PROPOSAL CERTIFICATION

Date:

Contracts, Purchasing, and Risk Management  
Northern Arizona University

The undersigned certifies, pursuant to Arizona Revised Statute [38-503](#), that to the best of his/her knowledge (check one):

- There is no officer or employee of Northern Arizona University who has, or whose relative has, a substantial interest in any Contract award subsequent to this RFP.
  
- The names of any and all public officers or employees of Northern Arizona University who have, or whose relative has, a substantial interest in any Contract award subsequent to this RFP are identified by name as part of the submittal.

The undersigned further certifies, in accordance with Federal Acquisition Regulation 52.209-5, that Proposer (check one)  IS or  IS NOT currently debarred, suspended, or proposed for debarment by any federal entity. The undersigned agrees to notify the University of any change in this status, shall one occur, until such time as an award has been made under this procurement action. The debarred list (List of Parties Excluded from Federal Procurement and Non-Procurement Programs) can be found at: <https://www.sam.gov/portal/SAM/#1>.

In compliance with RFP Number: \_\_\_\_\_ and after carefully reviewing all the terms and conditions imposed therein, the undersigned agrees to furnish such goods and/or services in accordance with the specifications/scope of work according to the Offer submitted or as mutually agreed upon by subsequent negotiation.

Name of Proposer		
Name of Contact		Title of Contact
Address 1		Address 2
City	State	Zip Code
		-
Telephone Number		E-mail address
(     )     -		
Print Name of Proposer's Authorized Agent		Signature of Proposer's Authorized Agent
Title of Proposer's Authorized Agent		Date

**AN AUTHORIZED AGENT OF THE OFFEROR  
SHALL SIGN THE PROPOSAL CERTIFICATION**

## ANTI-LOBBYING CERTIFICATION

Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Sept 2007). In accordance with the Federal Acquisition Regulation, 52.203-11:

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The Proposer, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989.

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of this contract;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the Proposer shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by Section 1352, Title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

Name of Proposer		
Name of Contact		Title of Contact
Address 1		Address 2
City	State	Zip Code
		-

Telephone Number	E-mail address
(     )     -	
Print Name of Proposer's Authorized Agent	Signature of Proposer's Authorized Agent
Title of Proposer's Authorized Agent	Date

**AN AUTHORIZED AGENT OF THE OFFEROR  
SHALL SIGN THE ANTI-LOBBYING CERTIFICATION**

## FEDERAL DEBARRED LIST CERTIFICATION

### Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (Dec 2001)

In accordance with the Federal Acquisition Regulation, 52.209-5:

- (a) (1) The Proposer certifies, to the best of its knowledge and belief, that—  
(i) The Proposer and/or any of its Principals—

(A) (check one) Are (  ) or are not (  ) presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency; (The debarred list (List of Parties Excluded from Federal Procurement and Nonprocurement Programs) is at <http://epls.arnet.gov> on the Web.)

(B) (check one) Have (  ) or have not (  ), within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) (check one) Are (  ) or are not (  ) presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.

(ii) The Proposer (check one) has (  ) or has not (  ), within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) “Principals,” for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The Proposer shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Proposer learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification

will be considered in connection with a determination of the Proposer’s responsibility. Failure of the Proposer to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Proposer nonresponsible.


(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Proposer is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Proposer knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

Name of Proposer		
Name of Contact		Title of Contact
Address 1		Address 2
City	State	Zip Code
		-
Telephone Number		E-mail address
(     ) -		
Print Name of Proposer’s Authorized Agent		Signature of Proposer’s Authorized Agent
Title of Proposer’s Authorized Agent		Date

**AN AUTHORIZED AGENT OF THE OFFEROR  
SHALL SIGN THE FEDERAL DEBARRED LIST CERTIFICATION**

## PROPOSER INFORMATION

 <small>Contracts, Purchasing, and Risk Management</small>	<b>NORTHERN ARIZONA UNIVERSITY</b> SUBSTITUTE W-9 & VENDOR AUTHORIZATION FORM Contracts, Purchasing and Risk Management Services 928-523-4557	DO NOT SEND TO IRS RETURN TO NAU	
Foreign individuals/business entities doing business within the U.S. should complete the Foreign Substitute W-9 available at <a href="http://nau.edu/Contracting-Purchasing-Services/Forms/">http://nau.edu/Contracting-Purchasing-Services/Forms/</a> .			
<b>1. Taxpayer Identification Number (TIN):</b>		<input type="checkbox"/> Employer ID Number (EIN) <input type="checkbox"/> Social Security Number (SSN)	
<b>2 LEGAL NAME:</b> <small>(must match TIN above)</small>			
<b>3. DUNS #</b> (If applicable)			
<b>4. LEGAL MAILING ADDRESS:</b>	<small>(Where check, tax information, and general correspondence is to be sent)</small>		
DBA (Doing Business As):			
Address:			
Address Line 2:			
City:	State:	ZIP Code:	
<b>5. Remit to Address:</b>	<input type="checkbox"/> Same as Legal Mailing Address		
Address:			
Address Line 2:			
City:	State:	ZIP Code:	
<b>6. Contact Name:</b>			
Phone Number:			
Email Address:			
<b>7. ENTITY TYPE</b>			
<input type="checkbox"/> Individual (not a business)	<input type="checkbox"/> Sole proprietor (Individually owned business) or sole proprietor organized as LLC or PLLC	<input type="checkbox"/> Corporation (NOT providing health care, medical or legal services)	<input type="checkbox"/> Corporation (providing health care, medical or legal services)
<input type="checkbox"/> The US or any of its policital subdivisions or instrumentalities	<input type="checkbox"/> A state, a possession of the US, or any of their policital subdivisions or instrumentalities	<input type="checkbox"/> Tax-exempt organizations under IRC §501	<input type="checkbox"/> Partnership, LLP or partnership organized as LLC or PLLC
<b>8. Business Purpose:</b>			
<input type="checkbox"/> Medical <input type="checkbox"/> Merchandise <input type="checkbox"/> Legal <input type="checkbox"/> Other, Specify:			
<b>9. Product or Service Provided/ Purpose of Payment:</b>			

 <p>Contracts, Purchasing, and Risk Management</p>	<p align="center"><b>NORTHERN ARIZONA UNIVERSITY</b>  SUBSTITUTE W-9 &amp; VENDOR AUTHORIZATION FORM  Contracts, Purchasing and Risk Management Services  928-523-4557</p>	<p align="center">DO NOT SEND TO IRS RETURN TO NAU</p>
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**10. FEDERAL INFORMATION – REQUIRED**

What is the Federal classification type of your business? – see definitions on link below.  
(S.B.A. Small Business definition FAR 19.001 and size standards FAR 19.102)  
<http://www.sba.gov/size>

LARGE Business? YES  NO   
SMALL Business? YES  NO

Please check all that apply to your business for Federal Supplier Type:

Service Disabled Veteran Owned (VD) <input type="checkbox"/>	Small Disadvantaged (SD) <input type="checkbox"/>	Women Owned (WO) <input type="checkbox"/>
Veteran Owned (VO) <input type="checkbox"/>	Minority Institution (MI) <input type="checkbox"/>	HUB Zone (HZ) <input type="checkbox"/>

Note: Supplier type will be verified through the System for Award Management  
<https://www.sam.gov>

**11. Residency (Select one):**

U.S. Person, Includes Resident Alien  
 Nonresident Alien performing services outside the U.S.

**12. CERTIFICATION**

Under penalties of perjury, I certify that :

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me),
2. I am not subject to backup withholding.
3. I am a U.S. person (including a resident alien). Cross ‘3’ if non-resident doing business outside the U.S.
4. I certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from doing business with the federal government. See Federal Acquisition Regulation section [52.209-6](#) for more information regarding debarment.

**The Internal Revenue Service does not require your consent to any provision of this document other than the certification required to avoid backup withholding.**

Payment Term: Net 30 in accordance with A.R.S. [35-342](#)

<b>PRINT NAME:</b>	<b>SIGNATURE:</b>
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Title:	Date:
--------	-------

NAU Contact Name and Phone/Email:

**AN AUTHORIZED AGENT OF THE OFFEROR  
SHALL SIGN THE VENDOR INFORMATION**

Northern Arizona University is an Equal Opportunity/Affirmative Action Institution.

## EXHIBIT 4 – FORM CONTRACT

### CONTRACT FOR SERVICES

This Contract (“Contract”) is made between the Arizona Board of Regents (“ABOR”), for and on behalf of Northern Arizona University (“University”), and \_\_\_\_\_ (“Contractor”).

**WHEREAS** the University issued Request for Proposal # \_\_\_\_\_ for \_\_\_\_\_.

**WHEREAS** the Contractor responded with its proposal.

**WHEREAS** the University awarded a Contract the Contractor.

**NOW, THEREFORE**, in consideration of the above premises, the parties hereto agree as follows:

1. **Contract.** Contractor agrees to provide \_\_\_\_\_ (“Services”) to include but not limited \_\_\_\_\_ in accordance with the terms and conditions herein and Exhibit A, attached hereto and incorporated herein by reference.

2. **Term.**

a. The Contract shall commence on \_\_\_\_\_, for an initial one (1) year period with the option to renew for four (4) additional one (1) year periods for a total term not to exceed five (5) years.

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.

**3. 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.

**4. 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.

**6. 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.

7. **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.

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

9. **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.

10. **Arbitration.** The parties agree to arbitrate disputes filed in Arizona Superior Court that are subject to mandatory arbitration pursuant to ARS § 12-133.

11. **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.

12. **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.

**13. 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.

**14. 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.

**15. 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.

**16. No Forced Labor of Ethnic Uyghurs:** To the extent required by A.R.S. § 35-394, Contractor certifies it is not currently, and during the term of this Agreement will not use: 1) the forced labor of ethnic Uyghurs in the People’s Republic of China; 2) any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China; or 3) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of the ethnic Uyghurs in the People’s Republic of China. If Contractor becomes aware during the term of the agreement that it is not in compliance with this written certification, it shall notify University within five (5) business days of becoming aware of the noncompliance.

**17. 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.
 

Each Occurrence	\$1,000,000
Damage to Rented Premises	\$50,000
Personal and Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$1,000,000
Liquor Liability (if applicable)	\$1,000,000
  
- b. **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. 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.
  
- f. 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.

- g. 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).
- h. 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.
- i. 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.
- j. The University's project or purchase order number and project description will be noted on each certificate of insurance.
- k. The Certificate Holder shall be listed as "State of Arizona, Arizona Board of Regents and Northern Arizona University".
- l. 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.
- m. Costs for coverage broader than those required or for limits in excess of those required shall not be charged to the University.
- n. 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.
- o. 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.

**18. 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.

**19. 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.

**20. 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.

**21. 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.

**22. 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.

**23. 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.

**24. 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.

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

**26. 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.

**27. 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.

**28. 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](#).

**29. 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.

**30. 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.

**31. 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.

**32. 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.

**33. 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.

**34. 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.

**35. Background Checks.** Contractor will exclude from any direct participation in Contractor's performance under the Contract, any unqualified persons. In addition, Contractor will, at Contractor's expense, conduct relevant and appropriate background checks and fingerprinting according to the [University's policies](#) on all assigned employees and new hires to ensure that it does not assign any employee or agent to the University who may reasonably be considered to pose a threat to the safety or welfare of the University community or its property. Contractor is required to maintain hereunder, all background and fingerprint information and all documentation relating to work performance for each employee or contractor who performs work hereunder. Contractor will abide by all applicable laws, rules and regulations including the Fair Credit Reporting Act and any equal opportunity laws, rules, and regulations.

**36. Foreign Corrupt Practices Act/UK Bribery Act/ Local Anti-corruption Law**

**Compliance.** 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.

**37. 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.

**38. Business Continuity Plan.** If requested by the University, Contractor will provide to the University, within thirty (30) days after such request, a comprehensive plan for continuing the performance of its obligations during a public or institutional emergency (the Business Continuity Plan). The Business Continuity Plan, at a minimum, will address the following: 1) identification of response personnel by name; 2) key succession and performance responses in the event of sudden and significant decrease in workforce; 3) contingency plans for the Contractor to continue the performance of its obligations under the Contract, despite the emergency and 4) if Contractor will store, have access to, or otherwise process any the University Data, a data recovery plan that includes the following: identification of data recovery personnel by name, how the University Data will be recovered, recovery point and recovery time objectives, and steps to be taken to recover the University Data. If the University requires a data recovery plan, upon the University's request, Contractor will provide the University with evidence that Contractor annually tests the data recovery plan. In the event of a Public or Institutional Emergency, Contractor will implement the applicable actions set forth in the Business Continuity Plan and will make other commercially practicable efforts to mitigate the impact of the event. For clarification of intent, Contractor will not be entitled to any additional compensation or extension of time by virtue of having to implement a Business Continuity Plan, unless otherwise agreed to by the University in writing. A Public or Institutional Emergency means a natural or human made event that creates a substantial risk to the public, that causes or threatens death or injury to the general public, or that causes a significant disruption to the day-to-day business operations of the University.

**39. 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.

**40. 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 online 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.

**41. 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.

**42. 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.

**43. 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.

**44. 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.

**45. 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.

**46. 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.

**47. 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.

**48. 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.

**49. 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.

**50. 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.

**51. 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.

**52. 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.

**53. 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.

**54. 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.

**55. 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 an 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>.

**56. 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.

**57. 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.

**58. 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/>.

**59. Essence of Time.** Time shall be of the essence as to matters related to this Contract.

**60. COVID-19 Pandemic.** When providing services on University owned or leased property, Contractor shall and shall cause its subcontractors to abide by the CDC guidelines for COVID-19 safety and ensure 1) face masks or cloth face coverings are worn at all times, 2) health screenings are conducted daily for all Contractor and subcontractor employees, 3) ill employees are not assigned to provide services and 4) the University's [Risk Management](#) department is notified within 24 hours, if an employee reports i) being tested for COVID-19 or ii) testing positive for COVID-19 and for cases follow all CDC guidance for quarantine or isolation. Do not provide personally identifiable information of the employee in the notification, an official representative will follow-up if needed.

**61. Federal Funding Provisions.** If a purchase order issued for a Service performed under this Contract involves the use of United States federal funds, including from a government grant or funds from a subcontract at any tier relating to a federal government grant, the following

terms apply to the Contract:

a. **Byrd Anti-Lobbying Amendment.** If the Contract is for \$100,000 or more, Contractor will file the certifications required by 31 U.S.C 1352 and associated regulations. Each tier certifies to the tier above that it will not or has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31U.S.C. 1352. Each tier will also disclose any lobbying with non-federal funds that takes place in connection with obtaining a federal award. Such disclosures are forwarded from tier to tier up to the University.

b. **Debarment & Suspension.** Contractor represents and warrants that neither it nor any of its subcontractors supplying the Services have either directly or indirectly or through subcontractors, been suspended, debarred, or otherwise excluded from participation in or penalized by any federal or state procurement, non-procurement, or reimbursement program. Contractor affirms that it has confirmed the above statement by checking The System for Award Management (SAM) [www.uscontractorregistration.com](http://www.uscontractorregistration.com) within 180 days prior to commencing work under the Contract. Contractor will provide immediate written notice to the University upon learning that it or any of its subcontractors are under any investigation or proposed action that could result in such exclusion, suspension, or debarment.

c. **Rights to Inventions Made Under a Contract.** If this Contract is a “funding agreement” under 37 CFR 401.3, the Parties agree to incorporate by this reference the standard patent rights clause found in 37 CFR 401.14 and any implementing regulations issued by the awarding agency.

d. **Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.** To the extent any of the provisions of 2 CFR Appendix II to Part 200 apply to this Contract, such provisions are incorporated by reference.

**62. Government Subcontract Provisions.** If a purchase order issued for a Service performed under this Contract is a subcontract under a U.S. government prime contract, the clauses referenced below of the Federal Acquisition Regulations (FAR) and the Defense Federal Acquisition Regulations (DFAR), or the Armed Services Procurement Regulations (ASPR) are incorporated into the Contract by this reference. Each regulation contains criteria for determining applicability of the regulation to a particular contract.

In the following clauses, the terms "Government" and "Contracting Officer" will mean the University; the term "Contract" will mean the Contract and the term “Contractor” will mean Contractor. Contractor will comply with all applicable federal laws and regulations, including but not limited to Uniform Guidance (2 CFR Part 200) and Debarment and Suspension (45 CFR 620).

For purchases funded with federal funds, the following provisions are incorporated into the Contract by reference where applicable and form a part of the terms and conditions of the Contract. Contractor agrees to flow down all applicable clauses to lower-tier entities.

Federal Acquisition Regulations (FAR)\*\*

- 52.202-1 Definitions
- 52.203-3 Gratuities
- 52.203-5 Covenant Against Contingent Fees
- 52.203-6 Restrictions on Subcontractor Sales to the Government
- 52.203-7 Anti-Kickback Procedures
- 52.203-12 Limitation on Payments to Influence Certain Federal Transactions
- 52.204-2 Security Requirements
- 52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.
- 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.
- 52.204-26 Covered Telecommunications Equipment or Services-Representation.
- 52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment
- 52.211-15 Defense Priority and Allocation Requirements
- 52.214-27 Price Reduction For Defective Cost or Pricing Data
- 52.215-1 Instructions to Contractors—Competitive Acquisition.
- 52.215-2 Audit and Records - Negotiation
- 52.215-12 Subcontractor Cost or Pricing Data
- 52.215-13 Subcontractor Cost or Pricing Data – Modifications
- 52-215-14 Integrity of Unit Prices
- 52-219-8 Utilization of Small Business Concerns
- 52-219-9 Small Business Subcontracting Plan
- 52.222-1 Notice to the Government of Labor Disputes
- 52.222-4 Contract Work Hours and Safety Standards Act Overtime Compensation
- 52.222-6 Davis-Bacon Act [Construction Wage Rate Requirements]
- 52.222-20 Walsh Healey Public Contracts Act [Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000.]
- 52.222-21 Prohibition of Segregated Facilities
- 52.222-26 Equal Opportunity
- 52.222-35 Equal Opportunity for Veterans
- 52.222-36 Equal Opportunity for Workers with Disabilities
- 52.222-37 Employment Reports on Veterans
- 52.222-40 Notification of Employee Rights Concerning Payment of Union Dues or Fees
- 52.222-41 Service Contract Act of 1965, as Amended
- 52.222-50 Combating Trafficking in Persons
- 52.223-3 Hazardous Material Identification and Material Safety Data
- 52.223-6 Drug-Free Workplace
- 52.225-1 Buy American Act – Supplies

52.225-13 Restrictions on Certain Foreign Purchases  
52.227-1 Authorization and Consent (Alt I in all R&D)  
52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement  
52.227-3 Patent Indemnity  
52.227-10 Filing of Patent Applications--Classified Subject Matter  
52.227-11 Patent Rights – Ownership by the Contractor (Alt I-V)  
52.227-13 Patent Rights - Ownership by the Government  
52.227-14 Rights in Data – General  
52.233-1 Disputes  
52.242-1 Notice of Intent to Disallow Costs  
52.242-15 Stop-work order  
52.243-1 Changes - Fixed Price (43.205 (a) (1) Alts may apply)  
52.243-2 Changes - Cost Reimbursement (43.205 (b) (1) Alts may apply)  
52.244-2 Subcontracts  
52.244-5 Competition in Subcontracting  
52.244-6 Subcontracts for Commercial Items  
52.245-2 Government Property – Installation Operation Services  
52.246-15 Certificate of Conformance  
52.247-63 Preference for U.S. Flag Air Carriers  
52.247-64 Preference for U.S. Flag Commercial Vessels  
52.249.1 Termination for Convenience of the Government (Fixed Price) less than simplified acquisition threshold  
52.249-2 Termination for Convenience of the Government (Fixed Price) more than simplified acquisition threshold  
52.249.4 Termination for Convenience of the Government (Services)  
52.249-5 Termination for the Convenience of the Government (Educational and Other Nonprofit Institutions)  
52.249- 14 Excusable Delays

Defense Federal Acquisition Regulations (DFAR)\*\* DFAR CIT. TITLE

252.203-7001 Prohibition on Persons convicted of Fraud or Other Defense-Contract-Related Felonies  
252.222- 7000 Restrictions on Employment of Personnel  
252.225-7000 Buy American Act and Balance of Payments program  
252.227-7013 Rights in Technical Data and Computer Software  
252.227-7016 Rights in Bid or Proposal Information  
252.227-7018 Rights in Noncommercial Technical Data and Computer Software  
252.227-7019 Validation of Asserted Restrictions – Computer Software  
252.227-7037 Validation Technical Data  
252.243-7001 Pricing of Contract Modifications  
252.244-7000 Subcontracts for Commercial Items and Commercial Components

\*Full text of the FAR clauses can be found at <https://www.acquisition.gov/far/part-52>

\*\*Full text of the DFAR clauses can be found at <https://www.acquisition.gov/dfars/part-252-solicitation-provisions-and-contract-clauses>

WHEREFORE, the parties have executed this Contract on the date set forth below.

ARIZONA BOARD OF REGENTS  
for and on behalf of  
Northern Arizona University

SUCCESSFUL PROPOSER

By _____	By _____
Name _____	Name _____
Title _____	Title _____
Date _____	Date: _____

SAMPLE EXHIBIT A TO CONTRACT FOR SERVICES

Scope/Description of Services

[Exhibit A will be the agreement of the parties based on the RFP process].

SAMPLE EXHIBIT B TO CONTRACT FOR SERVICES

Pricing

[Exhibit B will represent pricing resulting from the RFP process].

**EXHIBIT 5 – TERMS AND CONDITIONS**

**Proposals that are contingent upon any changes to these mandatory contract terms and conditions may be deemed nonresponsive and may be rejected.** All exceptions must be submitted with justification and alternate language and **MUST** be submitted with the Proposal.

**Terms and Conditions**

The University’s Terms and Conditions are available at [Terms and Conditions](#).

**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.

Each Occurrence	\$1,000,000
Damage to Rented Premises	\$50,000
Personal and Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$1,000,000
Liquor Liability (if applicable)	\$1,000,000

- b. **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. 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.
- f. 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.
- g. 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).
- h. 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.
- i. 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.
- j. The University's project or purchase order number and project description will be noted on each certificate of insurance.

- k. The Certificate Holder shall be listed as “State of Arizona, Arizona Board of Regents and Northern Arizona University”.
- l. 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.
- m. Costs for coverage broader than those required or for limits in excess of those required shall not be charged to the University.
- n. 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.

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.