

Terms and Conditions

By filling this Purchase Order, the Vendor agrees to the following terms and conditions:

Delivery and Billing: Time is of the essence of this Agreement. If the goods or services ordered herein are not delivered by the delivery date on the front of this Purchase Order, the Vendor shall be in breach of this Agreement and the County shall be entitled to all remedies available to it at law or in equity. Vendors must submit invoices within 60 days of the provision of service or goods unless the County otherwise agrees in writing. Failure to timely submit invoices may result in a rejection of invoice.

Subcontractors: Any subcontractors and outside associates or consultants required by the Vendor in connection with goods or services covered by this Agreement shall be limited to such individuals or firms as are specifically authorized in writing by the County. Any substitutions in or additions to such subcontractors, associates or consultants shall be subject to the prior written approval of the County. All subcontractors, associates or consultants are subject to the provisions of this Agreement and are directly responsible to the Vendor.

Officials Not to Benefit: No member of the Calhoun County Board of Commissioners, or any other County employee, except as otherwise provided for in accordance with this Agreement, shall receive any benefit that may arise therefrom.

Right to Supply Goods or Perform Services: The Vendor represents and warrants that the supply of goods or performance of services herein, and other duties and obligations of the Vendor as set forth herein, are not in violation of any other agreement to which the Vendor is a party or by which the Vendor is bound. The Vendor agrees to indemnify and hold the County harmless from and against any liability arising out of any breach of such an agreement or claimed breach of this warranty.

Good Workmanship and Intended Use: The Vendor represents and warrants that any goods supplied herein will be of good workmanship free from defects, and if the intended use thereof is known to the Vendor, that the goods are suitable for that intended use. If the goods or services supplied are covered by any warranty of a supplier or manufacturer other than the Vendor, the Vendor agrees that said warranties shall be transferred to the County. If said warranties are not transferable to the County, the Vendor shall notify the County immediately upon discovery of that fact, and the County shall, at its option, be excused from performance under this Agreement.

Liability and Indemnification: The Vendor shall indemnify and hold harmless the County, its officials, officers, agents, employees and assigns, from and against all claims, judgments, losses, damages, demands, payments, recoveries, legal proceedings, orders and decrees of every nature and description, including attorney fees, of third persons or employees of the Vendor, arising out of or resulting from the Vendor's performance or non-performance under this Agreement. Such indemnification will extend to any infringing use by the County of a product or service offered by the Vendor under this Agreement when that product or service itself infringes on the intellectual property of a third party.

Risk of Loss: The risk of loss of any goods sold to the County under this Agreement shall pass from the Vendor to the County at the time the County takes possession of the goods.

Anticipatory Breach: If the Vendor, at any time before delivery of goods or services, declares its intent not to perform in accordance with this Agreement, the County shall have an immediate cause of action for breach of this Agreement, and shall be entitled to all remedies available to it at law or in equity.

Governmental Immunity and Third Parties: The County does not waive any immunity granted to it by law by entering into this Agreement, and fully retains all immunities and defenses provided by law with respect to any action based upon or occurring because of this Agreement. The County and the Vendor agree that this Agreement is for their sole benefit, and further agree that there are no intended or unknown third-party beneficiaries to this Agreement.

Insurance: Unless otherwise stated in contract documents, Vendor shall procure and maintain, at its own cost and expense for the duration of their contract with the County, appropriate insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work, goods and/or services.

Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and endorsements shall be delivered to the County at or prior to the execution of the Purchase Order.

In the event such proof of insurance is not delivered as required, or in the event such insurance is canceled or expires and no replacement coverage is provided, County has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under the contract and to pay the premium. Any premium so paid by the County shall be charged to and promptly paid by Vendor or deducted from sums due Vendor at the County's option.

Any insurance proceeds available to County in excess of the limits and coverage required and which is applicable to a given loss, will be available to County. Any reduction or exhaustion in the limits of required insurance coverage shall not be deemed to limit the indemnification afforded in this Agreement.

Vendor shall obtain and maintain at its sole cost and expense, until completion of performance and acceptance by County, the following insurance placed with an insurer licensed and admitted to write insurance in Michigan or an authorized non-admitted insurer having a rating of or equivalent to A- or better by A.M. Best Company and acceptable to the County. All deductibles and SIRS are the responsibility of the Vendor. It shall be the responsibility of the Vendor to ensure that all subcontracts comply with the same insurance requirements that it is required to meet.

Commercial General Liability — Occurrence form, with limits of liability not less than \$1,000,000 per occurrence/\$2,000,000 aggregate. Coverage shall include bodily injury, personal injury, property damage (broad form), premises/operations, blanket contractual liability, independent contractors coverage, products/completed operations, explosion, collapse and underground hazard, if applicable, and a per project aggregate. Limits may be satisfied using primary and excess/umbrella liability policies.

Automobile Liability — Including Michigan No-Fault coverages, with limits of liability not less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage. Coverage shall include all owned, non-owned, and hired vehicles. Limits may be satisfied using primary and excess/umbrella liability policies.

Workers' Compensation and Employer's Liability — Statutory coverage or proof acceptable to the County of approval as a self-insurer by the State of Michigan.

Professional Liability (Errors and Omissions) — in an amount not less than \$1,000,000 per occurrence and aggregate shall be required when professional services are provided covering acts, errors or omissions of a professional nature committed or alleged to have been committed by

The policies and coverages shall include an endorsement stating County of Calhoun, all elected and appointed officials, all employees and volunteers, agents, all boards, commissions, and/or authorities and board members, including employees and volunteers thereof shall be additional insureds. Coverage afforded shall be considered primary and any other insurance the County may have in effect shall be considered secondary and/or excess.

The policies shall include a thirty (30) day cancellation clause or endorsement. Advance Written Notice of Cancellation or Non-Renewal shall be sent to the County of Calhoun, Purchasing Division. Cancellation, material restriction, nonrenewal or lapse of any of the required policies shall be grounds for immediate termination of the Agreement by the County.

The insurance provisions contained herein may only be modified in a writing signed by each party or an authorized representative of each party-

Nothing in these insurance provisions shall be interpreted as a limitation on the ability of the Vendor to obtain additional insurance which the Vendor determines to be in its best interest. Additionally, nothing in these insurance provisions shall be interpreted to be a statement by the County that the above quoted insurance coverages will cover all risks or liability. Without regard to insurance, the Vendor remains liable to the County for all damages arising out of the Vendor's performance or non-performance of this Agreement as set forth in the indemnification provisions above.

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

Safety: The Vendor shall at all times observe and comply with all federal, state and local laws, ordinances, rules and regulations that may in any manner affect the safety of equipment or material provided under or used in accordance with this Agreement, those employed on the work, and the conduct of the work. The Vendor shall indemnify and hold harmless the County against any claim or liability arising from the violation of any such provisions.

Cumulative Remedies: All remedies set forth in this Agreement are cumulative and in addition to all other rights and remedies the parties hereto may have at law or in equity, which rights and remedies are expressly reserved.

Entire Agreement: This Agreement, together with any affixed schedules, exhibits and addenda, shall constitute the entire agreement between the parties. Any prior understanding, representation or negotiation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

Battle of Forms: Pursuant to MCLA 440.2207, no attempt to modify Calhoun County's Standard Terms & Conditions or the solicitation shall be binding on Calhoun County absent agreement on such modification, in writing, and signed by an individual authorized by Purchasing Policy 405 adopted by the Calhoun County Board of Commission, as amended, as of the effective date of this Agreement.

Modification of Agreement: Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in a writing signed by an authorized representative of each party, and an individual authorized by Purchasing Policy 405 adopted by the Calhoun County Board of Commission, as amended, as of the effective date of this Agreement

Partial Invalidity: The partial invalidity of any portion of this Agreement shall not be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expunction of the invalid provision.

Absence of Waiver: The failure of either of the parties to this Agreement to insist on the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but the terms and conditions shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

Assignment of Rights: The rights and obligations of each party under this Agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation or other entity without the prior, express and written consent of the other party. In the event of a proper assignment, this Agreement shall be binding upon and inure to the benefit of the parties' successors and assigns.

Consent to Personal Jurisdiction: The Vendor acknowledges that this Agreement shall be deemed to have been executed in the State of Michigan, and hereby consents to the exercise of general personal jurisdiction over it by the appropriate courts of the State of Michigan. Any action on a controversy that arises under this Agreement shall be brought in the State of Michigan, which the Vendor agrees is a reasonably convenient place for trial of the action. The Vendor agrees that its consent in accordance with this section is not obtained by misrepresentation, duress, the abuse of economic power, or other unconscionable means.

Vendor Representation and Warranty Regarding Federal Excluded Parties List: The Vendor acknowledges that the County may be receiving funds from or through the Federal Government and that such funds may not be used to pay any vendor on the Federal Excluded Parties List (EPLS). The Vendor represents and warrants to the County that they are not on the Federal EPLS. If the Vendor is in non-compliance at any time during execution or term of this agreement (including any extensions thereof), the Vendor shall be in breach and the County shall be entitled to all remedies available to it at law or equity, specifically including but not limited to recovery of all moneys paid to the Vendor, all consequential damages (including the lost of grant funding or the requirement that grant funding be returned), and attorneys fees (including the costs of in-house counsel) sustained as a result of the Vendor's non-compliance with this warranty and representation. Pursuant to the Michigan Iran Economic Sanctions Act, 2012 P.A. 517, Vendor certifies, under civil penalty for false certification, that it is fully eligible to do so under law and that it is not an "Iran linked business" as that term is defined in the Act.