

## **GENERAL CONTRACT TERMS AND CONDITIONS FOR LEXTRAN'S VENDORS**

The Transit Authority of Lexington-Fayette Urban County Government (Lextran) is a recipient of federal funds and is mandated to follow specific guidelines in the procurement of goods and services. The following terms and conditions shall be incorporated by reference into any contract or purchase order that results from this solicitation.

Definitions used herein:

- The terms “respondent, bidder, proposer, and contractor” mean the offerer or vendor.
- The terms “the Authority” and “recipient” (as in recipient of FTA funds) mean the Transit Authority of Lexington-Fayette Urban County Government (Lextran).
- The term “USDOT” means the United States Department of Transportation.
- The term “FTA” means the Federal Transportation Administration.

### **FOR ALL PURCHASES OVER \$3,500**

The following provisions will apply:

#### **1. No Government Obligation to Third Parties**

(1) Lextran and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to Lextran, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### **2. Program Fraud and False or Fraudulent Statements and Related Acts**

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq. and U.S. DOT regulations, “Program Fraud Civil Remedies”, 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

### **3. Access to Records and Reports**

(1) Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

(2) Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts, and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims, or exceptions related thereto.

(3) Access to Records. The Contractor agrees to provide sufficient access to the Federal Transit Administration (FTA), the U.S. Secretary of Transportation or the Secretary's duly authorized representatives, the Comptroller General of the United States, the Comptroller General's duly authorized representatives, and the duly authorized representatives of Lextran to inspect and audit records and information related to the performance of this Contract as reasonably may be required.

(4) Access to the Sites of Performance. The Contractor agrees to permit those individuals listed above access to the sites of performance under this Contract as reasonably may be required.

### **4. Federal Changes**

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the [Master Agreement](#) between Lextran and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### **5. Civil Rights Requirements**

The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex (including sexual orientation and gender identity), age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Race, Color, Religion, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor”, 41 C.F.R. Chapter 60, and Executive Order No. 11246, “Equal Employment Opportunity in Federal Employment”, September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) Age - In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act”, 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance”, 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(4) Disabilities - In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(5) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA.

Within Fayette County the Fairness Ordinance (no. 201-99) applies. This ordinance adds sexual orientation/gender identity as a protected class against discrimination in housing, employment and public accommodations.

In addition, the Contractor agrees to comply with any implementing requirements or applicable regulations the local government may issue.

## **6. Incorporation of Federal Transit Administration (FTA) Terms**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in [FTA Circular 4220.1F](#) are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Lextran requests which would cause Lextran to be in violation of the FTA terms and conditions.

## **7. Energy Conservation Requirements**

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

*The Energy Conservation requirements are applicable to all contracts.*

*The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.*

## **8. Disadvantaged Business Enterprise (DBE)**

### **8.1 Overview**

It is the policy of Lextran and the United States Department of Transportation (DOT) that Disadvantaged Business Enterprises (DBEs), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts. It is also the policy of Lextran to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in DOT-assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and

7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

This contract is subject to 49 C.F.R. part 26. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. Lextran shall make all determinations with regard to whether or not a bidder/proposer is in compliance with the requirements stated herein. In assessing compliance, Lextran may consider during its review of the bidder/proposer's submission package, the bidder/proposer's documented history of non-compliance with DBE requirements on previous contracts with Lextran.

## **8.2 Contract Assurance**

The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Lextran deems appropriate, which may include, but is not limited to:

- Withholding monthly progress payments;
- Assessing sanctions;
- Liquidated damages; and/or
- Disqualifying the contractor from future bidding as non-responsible.

Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph.

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from Lextran. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by Lextran and contractor's receipt of the partial retainage payment related to the subcontractor's work.

## **8.3 DBE Participation Requirement**

For the purpose of this Contract, Lextran will accept only DBEs who are certified at the time of bid opening or proposal evaluation by the Commonwealth of Kentucky.

## **8.4 DBE Participation Goal**

There is no specific contractual DBE goal for smaller dollar procurements. The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance. While there are no contractual requirements for the successful contractor to utilize the services of a DBE, Lextran strongly encourages the contractor to do so if possible.

## 8.5 Counting DBE Participation

**The bidder/proposer may count toward its DBE utilization only expenditures to firms which are currently certified by the KY UCP and which perform a commercially useful function.** A firm is considered to perform a commercially useful function when it is responsible for the performance of a distinct element of the work and carries out its responsibilities by actually performing, managing and supervising the work involved.

To determine whether a firm is performing a commercially useful function, the DBE Officer will evaluate the amount of work subcontracted, industry practices and other relevant factors. The DBE Officer reserves the right to deny or limit DBE credit to the bidder/proposer where any DBE is found to be engaged in substantial pass-through activities with others.

DBE participation shall be counted toward the DBE goal in the contract as follows:

- A. Once a DBE is determined to be eligible in accordance with these rules, the total dollar value of the contract awarded to the DBE may be counted toward the DBE goal except as indicated below.
- B. A bidder/proposer may count toward its DBE goal that portion of the total dollar value of a contract with an eligible joint venture equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces.
- C. Consistent with normal industry practices, a DBE may enter into subcontracts. If a DBE subcontracts more than thirty percent (30%) or a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the DBE shall be presumed not to be performing a commercially useful function. Evidence may be presented by the bidder/proposer involved to rebut this presumption.
- D. When a DBE subcontracts a part of the work under the contract to another firm, the value of the subcontracted work may only be counted towards the DBE goal if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count towards the DBE goal.
- E. The bidder/proposer may count one-hundred percent (100%) of its expenditures for materials and supplies required under the contract and which are obtained from a DBE manufacturer towards the DBE goal. The bidder may count sixty percent (60%) of its expenditures for material and supplies under the contract obtained from a DBE regular dealer towards its DBE goal. The terms "manufacturer" and "regular dealer" are defined in 49 C.F.R. Part 26.55(e)(1)(ii) and (2)(ii).
- F. The bidder/proposer may count towards its DBE goal expenditures to DBEs which are not manufacturers or regular dealers, such as fees or commissions charged for services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies and transportation charges as set forth in 49 C.F.R. Part 26. However, the DBE Officer must determine the fee or charge to be reasonable and not excessive as compared with fees or charges customarily allowed for similar services.

The bidder/proposer must use good business judgment when negotiating with subcontractors and take a DBE's price and capabilities into consideration. The fact that there may be some additional costs involved in finding and using DBE firms is not sufficient reason to fail to utilize a DBE, as long as such costs are reasonable.

## **8.6 Reporting**

Lextran shall monitor the Contractor's DBE utilization during the life of the contract. In the event this procurement exceeds ninety (90) days, it will be the responsibility of the Contractor to submit quarterly written reports to Lextran that summarize the total DBE value for this Contract. These reports shall provide the following details:

- DBE utilization established for the Contract;
- Total value of expenditures with DBE firms for the quarter;
- The value of expenditures with each DBE firm for the quarter by race and gender;
- Total value of expenditures with DBE firms from inception of the Contract; and
- The value of expenditures with each DBE firm from the inception of the Contract by race and gender.

Reports and other correspondence must be submitted to the DBE Compliance Officer with copies provided to the Director of Purchasing. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The Contractor shall permit Lextran to have access to necessary records to examine information as Lextran deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, invoices, and contracts between the Contractor and other DBE parties entered into during the life of the Contract. The authorized representatives of Lextran, the U.S. Department of Transportation, the Comptroller General of the United States, or their designees shall be allowed to inspect and audit all data and records of the Contractor relating to its performance under the DBE Participation provision of this Contract. All data and records pertaining to DBEs shall be maintained for at least three (3) years from the termination or completion of this Contract.

## **8.7 DBE Program Definitions**

A disadvantaged business enterprise is a business:

- A. Which is at least 51% owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly-owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
- B. Whose management and daily business operation are controlled by one or more of the socially and economically disadvantaged individuals who own it. OR
- C. Which is at least 51% owned by one or more women individuals, or in the case of any publicly-owned business, at least 51% of the stock of which is owned by one or more women individuals; and
- D. Whose management and daily business operations are controlled by one or more women individuals who own it.

“Small business concern” means a small business as defined by section 3 of the Small Business Act and Appendix B – Section 106(c) Determination of Business Size.

“Socially and economically disadvantaged individuals” means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, or any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act.

- A. “Black Americans” includes persons having origins in any of the Black racial groups of Africa.
- B. “Hispanic Americans” includes persons of Mexican, Puerto Rican, Cuban, Central or South America, or other Spanish or Portuguese culture or origin, regardless of race.
- C. “Native Americans” includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians.
- D. “Asian Americans” includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, U.S. Trust Territories of the Pacific, and the Northern Marianas.
- E. “Asian-Indian Americans” includes persons whose origins are from India, Pakistan, and Bangladesh.
- F. “Women”, regardless of race, ethnicity, or origin.
- G. “Other” individuals found to be socially and economically disadvantaged by the Small Business Administration (SBA) pursuant to Section 8(a) of the Small Business Act.

## **9. Payment of Subcontractors**

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from Lextran. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor’s work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of Lextran. This clause applies to both DBE and non-DBE subcontracts.

The Contractor is required to include, in each subcontract, a clause requiring the use of appropriate arbitration mechanisms to resolve all payment disputes.

Lextran will not pay the Contractor for work performed unless and until the Contractor ensures that the Subcontractors have been promptly paid for the work they have performed under all previous payment requests, as evidenced by the filing with Lextran of lien waivers, canceled checks (if requested), and the Contractor’s sworn statement that it has complied with the prompt payment requirements. Prime Contractors must submit a prompt payment affidavit, (form to be provided by Lextran and reproduced below) which identifies each subcontractor (both DBE and non-DBE) and the date and amount of the last payment to such subcontractor, with every payment request filed with Lextran, except for the first payment request, on every contract with Lextran.

Failure to comply with these prompt payment requirements is a material breach of the Contract, which may lead to any remedies permitted under law, including, but not limited to, Contractor debarment.

### **Reporting Requirements During the Term of the Contract**

The bidder/proposer shall within thirty (30) business days of contract award, or prior to any work being performed, execute formal subcontracts or purchase orders with the DBE firms included in the bid. These written agreements shall be made available to Lextran upon request. All contracts between the bidder/proposer and its subcontractors must contain a prompt payment clause as set forth in this section above.

During the term of annual contracts, the bidder/proposer shall submit regular “Status Reports of DBE Subcontract Payments” in a form acceptable to the Authority. The frequency with which these reports are to be submitted will be determined by Lextran, but in no event will reports be required less frequently than quarterly. In the absence of written notice from Lextran, the bidder’s/proposer’s first “Status Report of DBE Subcontract Payments” will be due ninety (90) days after the date of contract award, with additional reports due quarterly thereafter.

In the case of a one-time procurement with either a single or multiple deliveries, a “Status Report of DBE Subcontract Payments”, in a form acceptable to the Authority, indicating final DBE payments shall be submitted directly to Lextran. The information must be submitted prior to or at the same time as the bidder’s/proposer’s final invoice to the Authority. Failure to follow these directions may delay final payment.

**PROMPT PAYMENT AFFIDAVIT**

Contractor will place a check in the appropriate box below that applies to this payment request.

Re: Payment Request No. \_\_\_\_\_

I, \_\_\_\_\_ (Name), the \_\_\_\_\_ (Title - e.g., President, Vice President, etc.) of \_\_\_\_\_ ("Company"), do state the following with regard to payments made under Contract No. \_\_\_\_\_ ("Contract"):

1. \_\_\_\_\_ Subcontractors, at the first tier, both DBE and non-DBE, who completed work and were listed for payment on the prior Payment Request No. \_\_\_\_\_, were paid no later than thirty (30) business days after Company received payment from Lextran.
2. \_\_\_\_\_ Copies of invoices and cancelled checks for subcontractors at the first tier who were paid under the prior payment request have been delivered or mailed to the DBE Department. In addition, Company has attached to the current Payment Request all lien waivers for prior subcontractor payments and any other documentation required by Lextran. (Failure to attach all required documentation to the Payment Request or forward cancelled checks and invoices to the Lextran DBE Department may cause the Payment Request to be rejected by Lextran.)
3. \_\_\_\_\_ All retainage amounts withheld from any subcontractor who satisfactorily completed its portion of the contract work, including punch list items, were paid to the subcontractor(s) no later than thirty (30) business days after it satisfactorily completed its work, whether or not Lextran has paid said retainage amounts to Company. Attach a copy of the cancelled check evidencing payment of each retainage amount.
4. \_\_\_\_\_ There was no delay in or postponement of any payment owed to a subcontractor, whether periodic payment or retainage amount, except for good cause and after receipt of prior written approval from the Lextran Purchasing Agent.

Attach a copy of the written approval from the Lextran Purchasing Agent.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

Date: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
Notary Public

## **FOR ALL PURCHASES OVER \$10,000**

All provisions that apply to purchases over \$3,500 still apply, but, in addition, the following provision will also apply:

### **10. Termination**

**a. Termination for Convenience (General Provision)** Lextran may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in Lextran's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Lextran to be paid the Contractor. If the Contractor has any property in its possession belonging to Lextran, the Contractor will account for the same, and dispose of it in the manner Lextran directs.

**b. Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, Lextran may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by Lextran that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, Lextran, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

**c. Opportunity to Cure (General Provision)** Lextran in its sole discretion may, in the case of a termination for breach or default, allow the Contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to Lextran's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from Lextran setting forth the nature of said breach or default, Lextran shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Lextran from also pursuing all available remedies against Contractor and its sureties for said breach or default.

**d. Waiver of Remedies for any Breach** In the event that Lextran elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by Lextran shall not limit Lextran's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

**e. Termination for Convenience (Professional or Transit Service Contracts)** Lextran, by written notice, may terminate this contract, in whole or in part, when it is in Lextran's interest. If this contract is terminated, Lextran shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

**f. Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, Lextran may terminate this contract for default. Lextran shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Lextran.

**g. Termination for Default (Transportation Services)** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, Lextran may terminate this contract for default. Lextran shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Lextran goods, the Contractor shall, upon direction of Lextran, protect and preserve the goods until surrendered to Lextran or its agent. The Contractor and Lextran shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Lextran.

**h. Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, Lextran may terminate this contract for default. Lextran shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, Lextran may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to Lextran resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by Lextran in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Lextran, acts of another Contractor in the performance of a contract with Lextran, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. the contractor, within ten (10) days from the beginning of any delay, notifies Lextran in writing of the causes of delay. If in the judgment of Lextran, the delay is excusable, the time for completing the work shall be extended. The judgment of Lextran shall be final and conclusive on the parties, but subject to appeal under the Disputes clause of this contract.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Lextran.

**i. Termination for Convenience or Default (Architect and Engineering)** Lextran may terminate this contract in whole or in part, for Lextran's convenience or because of the failure of the Contractor to fulfill the contract obligations. Lextran shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of Lextran, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, Lextran may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by Lextran.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Lextran.

**j. Termination for Convenience or Default (Cost-Type Contracts)** Lextran may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of Lextran or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from Lextran, or property supplied to the Contractor by Lextran. If the termination is for default, Lextran may fix the fee, if

the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Lextran and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Lextran, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, Lextran determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, Lextran, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

### **FOR ALL PURCHASES OVER \$20,000**

All of the previous provisions apply to purchases over \$20,000. Any purchases at this dollar threshold shall be done as a formal procurement. The procurement document will contain all applicable contract terms and required clauses, as well as various certifications the vendor will need to sign and submit to compete for the business opportunity.

**Please sign and date to acknowledge your acceptance of these terms and conditions.  
Completed forms may be sent to the Lextran Purchasing Department, 200 West Loudon  
Avenue, Lexington, KY 40508.**

I am in receipt of the Lextran General Provisions and Required Federal Clauses document and understand these terms and conditions are a part of any order I accept from Lextran.

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Signature

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Print Name

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Company

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Title

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Date