

KYMEA RFP No: 2023-3  
General Terms and Conditions  
December 22, 2023

## **A. GENERAL PROVISIONS**

### **1. SILENCE OF SPECIFICATIONS**

The apparent silence of these specifications as to any detail or the apparent omission from it of a detailed description concerning any point, shall be regarded as a meaning that the only best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.

### **2. PROPOSERS COST TO DEVELOP PROPOSAL**

Proposers to this RFP are responsible for all costs of Proposal preparation, delivery and any oral presentations required as part of the selection process. All materials submitted in response to this RFP become property of KYMEA and will be returned only at the option of KYMEA.

### **3. MINIMUM RESPONSE**

Proposals that do not, at a minimum, contain the information requested in the RFP will be subject to **disqualification** at the sole discretion of KYMEA. Any firm submitting a proposal must be registered to conduct business in the State of Kentucky. Proof of this registration **must be included** as part of the Proposal.

### **4. VALIDITY PERIOD**

The information included in the Proposer's response(s), and any cost information obtained from a negotiation process, remain valid for ninety 90 days from the response due date or until a procurement Agreement is approved by KYMEA.

### **5. REJECTION OF PROPOSAL**

KYMEA reserves the right to reject any and all proposals received in response to this RFP and to waive any minor technicalities or irregularities as determined to be in the best interest of KYMEA.

### **6. PROPRIETARY INFORMATION**

If a Proposer does not desire proprietary information in the proposal to be disclosed, the Proposer shall identify all proprietary information in the proposal. This identification will be accomplished by individually marking with the words "Proprietary Information". If the Proposer fails to identify proprietary information, the Proposer agrees that by proposal of its response, that those sections shall be deemed non-proprietary and made available upon public request. Proposers are advised that KYMEA, to the extent permitted by law, will protect the confidentiality of all proposals. Proposer shall consider

the implications of Kentucky public information laws, particularly after the RFP process has ceased and the Agreement has been awarded.

## **7. NON-ENDORSEMENT**

If a proposal is accepted, the successful Proposer shall not issue any news releases or other statements pertaining to the award or servicing of the agreement that state or imply KYMEA's endorsement of the successful Proposer's services.

## **8. ASSIGNMENT**

The successful Proposer shall not sell, assign, transfer or convey the Agreement in whole, or part, without the prior written consent of KYMEA.

## **9. UNAUTHORIZED COMMUNICATIONS**

After release of this RFP, Proposer contact regarding this RFP with members of the evaluation, interview or selection panels, employees of KYMEA or officials of KYMEA is prohibited and may result in disqualification from this procurement process. No officer, employee, agent or representative of the Proposer shall have any contact or discussion, verbal or written, with any members of KYMEA Board, members of the evaluation, interview, or selection team, KYMEA staff or KYMEA's consultants, or directly or indirectly through others, seeking to influence any KYMEA Board member, KYMEA staff, or KYMEA's consultants regarding any matters pertaining to this RFP, except as herein provided. If a representative of any Proposer violates the foregoing prohibition by contacting any of the above listed parties with who contact is not authorized, such contact may result in the Proposer being disqualified from the procurement process. Any oral communications are considered unofficial and non-binding with regard to this RFP.

## **10. DISQUALIFICATIONS**

Any terms and conditions attached to an RFP will not be considered unless specifically referred to on an RFP and may result in disqualification. Any proposals that do not clearly outline all qualifications may be disqualified.

## **11. PATENT RIGHTS**

The Proposer agrees to indemnify and hold harmless KYMEA from any claim involving patent right infringement or copyrights on goods supplied.

## **12. PREFERENCES**

It is the intent of KYMEA to consider the location of a Proposer's principal place of business in award of a bid.

### **13. AWARD**

KYMEA reserves the right to award the Proposal which is most advantageous or provides the “best value” to KYMEA.

### **14. AGREEMENTS**

The successful awarded Proposer will be required to sign an original Agreement. Proposers shall review the requirements of the RFP and clearly note exceptions in the proposal.

### **15. INSURANCE**

KYMEA requires insurance for services performed on site. The successful awarded Proposer will be required to provide a certificate of insurance as outlined in Appendix A– Insurance Requirements.

### **16. PERFORMANCE LIQUIDATED DAMAGES**

The Proposer shall incur contractual payment losses, as initiated by KYMEA for performance that falls short of specified performance standards as outlined below:

- Delivery beyond contracted lead times
- Performance below contracted levels (services only)

### **17. WARRANTIES**

The Proposer shall provide a warranty that is standard in the industry.

### **18. AUTHORIZED DISTRIBUTOR**

The manufacturer or authorized distributor of the proposed products shall be authorized to sell to KYMEA and make available the manufacturer’s representative as needed by KYMEA.

### **19. SUBSTITUTIONS**

Substitutions are not permitted without the written approval of KYMEA. If specific manufacturers, brands, or part numbers are listed in the exhibits, KYMEA will not accept substitutes.

### **20. PRODUCT CHANGES DURING AGREEMENT TERM**

The awarded Proposer shall not change specifications during the Agreement term without prior approval. Any deviation in the specifications or change in the products must be approved in advance by KYMEA. Notice of a change shall be submitted in writing.

Products/Services found to have changed specifications without notification, and acceptance, will be returned or replaced at the Proposer's expense.

## **21. ADDING NEW PRODUCTS OR SERVICES TO THE AGREEMENT AFTER AWARD**

Following the Agreement award, additional services or products of the same general category that could have been encompassed in the award of the Agreement, and that are not already on the Agreement, may be added. A formal written request may be sent to successful Proposer (s) to provide a proposal on the additional services and shall submit proposals to KYMEA as instructed.

## **22. SHIPPING, DELIVERY, AND PACKAGING**

### **Identification of Shipments:**

In addition to the complete destination address, each delivery must be clearly marked with the purchase order number. Each shipment must be accompanied by a packing slip.

### **Packaging and Labeling:**

All items shipped must be properly labeled, with weather resistant labeling, showing the brand name, package quantity, lot number (if applicable) and any other necessary identifying information.

### **Hours of Delivery:**

Delivery shall be made during normal business hours of 8:00 am to 4:00 pm (CST) unless prior approval for after-hours delivery has been obtained from KYMEA. In the event of any approval by KYMEA for after-hours delivery, Proposer may not invoice any additional charges for that delivery. Proposer is encouraged to obtain KYMEA's hours of operation at time of order.

### **Delivery Schedule:**

Proposers shall furnish a delivery schedule for each major line item as to time required for delivery after receipt of order (ARO) under normal conditions. Delivery Days means calendar days, unless otherwise specified.

### **Delivery Delays:**

If delay is foreseen, Proposer shall give written notice to KYMEA and must keep KYMEA advised at all times of the status of order. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes KYMEA to purchase goods and services of this RFP elsewhere and charge any increased costs for the goods and services, including the cost of re-procurement, to the Proposer.

### **Compliant Products:**

Providing products or materials which do not meet all specification requirements does not constitute delivery. Delivery does not occur until the Proposer delivers products or materials in full compliance with the specifications to KYMEA's F.O.B.

destination, unless delivery is specifically accepted, in whole or in part, by KYMEA. KYMEA reserves the right to require new delivery or a refund if materials or products not meeting specifications are discovered after payment has been made.

## **23. SAFETY AND ENVIRONMENTAL HAZARDS**

All Proposers to KYMEA are required to ensure absolute safety standards are applied and enforced when on a KYMEA site. KYMEA will not be responsible for individual Proposer safety, and the awarded Proposer shall not hold KYMEA responsible. Known hazards shall immediately be reported and all safety precautions shall be taken to prevent potential safety issues from occurring.

## **24. ADDITIONAL GENERAL REQUIREMENTS**

- a. Prior to commencement of the services, KYMEA and selected Proposer will conduct an initial meeting to review the overall scope, schedule, deliverables, and planning process to implement a successful program.
- b. The awarded Proposer shall provide to KYMEA, detailed reports of time and services provided to KYMEA on a monthly basis.

## **25. PAYMENT AND PERFORMANCE REQUIREMENTS**

### **A. PAYMENT AND INVOICES:**

**Payment:** KYMEA review, inspection, and processing procedures for invoices ordinarily require thirty (30) days after receipt of invoices, materials, or services. It is the intention of KYMEA to make payment within thirty days after receipt of valid invoices for which items or services have been received unless unusual circumstances arise. The 30-day processing period for invoices will begin on the date the invoice is received or the date the items or services are received, **whichever is later.**

**Direct deposit for payments:** Proposers are encouraged to arrange for receiving payments through direct deposit.

**Invoices** shall be sent directly to KYMEA at the following address;

Kentucky Municipal Energy Agency  
1700 Eastpoint Parkway, Suite 220  
Louisville, Kentucky 40223  
Attention: Chief Financial Officer

It is the intention of KYMEA to make payment on undisputed invoices within thirty days after receipt of invoice.

**B. PAYMENT TO PERFORMANCE MILESTONES**

Where applicable, awarded Proposer shall prepare and **submit invoices after completion of specific project milestones.** The invoice shall detail the major milestones accomplished and detailed cost information for project.

## **B. STANDARD PURCHASE TERMS AND CONDITIONS**

These standard Terms and Conditions and the Terms and Conditions, Specifications, Drawings, and other requirements included in KYMEA's Agreement are applicable to Agreements/purchase orders issued by KYMEA hereinafter referred to as KYMEA or Buyer and the Proposer herein after referred to as Proposer. Any deviations must be in writing and signed by a representative of KYMEA and the Proposer. No Terms and Conditions contained in the Proposer's proposal response, invoice or statement shall serve to modify the terms set forth herein. If there is a conflict between the provisions on the face of the Agreement/purchase order, these written provisions will take precedence.

**1. PROPOSER'S OBLIGATIONS.** The Proposer shall fully and timely provide all deliverables described in the RFP and in the Proposer's Proposal in strict accordance with the terms, covenants, and conditions of the Agreement and all applicable Federal, State, and local laws, rules, and regulations.

### **2. EFFECTIVE DATE/TERM.**

Unless otherwise specified in the RFP, the Agreement shall be effective as of the date the Agreement is signed by KYMEA and the Proposer and shall continue in effect until all obligations are performed in accordance with the Agreement.

### **3. PROPOSER TO PACKAGE DELIVERABLES:**

The Proposer will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Proposer's name and address, (b) KYMEA's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Proposer shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform to all the requirements of common carriers and any applicable specification. KYMEA's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

**4. SHIPMENT UNDER RESERVATION PROHIBITED:** The Proposer is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.

**5. TITLE & RISK OF LOSS:** Title to and risk of loss of the deliverables shall pass to KYMEA only when KYMEA actually receives and accepts the deliverables.

**6. DELIVERY TERMS AND TRANSPORTATION CHARGES:** Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified. Unless otherwise stated in the Proposal, the Proposer's price shall be deemed to include all delivery and transportation



charges. KYMEA shall have the right to designate what method of transportation shall be used to ship the deliverables. The place of delivery shall be that set forth the purchase order.

**7. RIGHT OF INSPECTION AND REJECTION:** KYMEA expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If KYMEA has the right to inspect the Proposer's, facilities, or the deliverables at the Proposer's premises, the Proposer shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to KYMEA to facilitate such inspection.

**8. NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender or delivery of deliverables must fully comply with all provisions of the Agreement as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Proposer shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Proposer may notify KYMEA of the intention to cure and may then make a conforming tender within the time allotted in the Agreement.

**9. PLACE AND CONDITION OF WORK:** KYMEA shall provide the Proposer access to the site where the Proposer is to perform the services as required for the Proposer to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Proposer acknowledges that it has satisfied itself as to the nature of KYMEA's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor, and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Proposer's obligations under the Agreement. The Proposer hereby releases and holds KYMEA harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

The Proposer shall, at all times, exercise reasonable precautions for the safety of their employees, KYMEA staff, participants, and others on or near KYMEA's facilities.

**10. WORKFORCE:**

A. The Proposer shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Agreement.

B. The Proposer, its employees, Subcontractors, and Subcontractor's employees may not while engaged in participating or responding to an RFP or while in the course and scope of delivering goods or services under a KYMEA Agreement or on KYMEA's property:

i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Agreement; or

ii. use or possess alcoholic or other intoxicating beverages, illegal drugs, or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

C. If KYMEA or KYMEA's representative notifies the Proposer that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Proposer shall immediately remove such worker from KYMEA facilities, and may not employ such worker again on the Project or at KYMEA's facilities without KYMEA's prior written consent.

**11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:** The Proposer, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules, and regulations in the performance of the services, including but not limited to those promulgated by KYMEA and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Proposer shall indemnify and hold KYMEA harmless from and against all claims, demands, suits, actions, judgments, fines, penalties, and liability of every kind arising from the breach of the Proposer's obligations under this paragraph.

**12. TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Agreement shall be paid by the Proposer, unless otherwise stated in the Agreement terms.

**15. FINAL PAYMENT AND CLOSE-OUT:**

A. Final payment, retainage, or both may be withheld if the Proposer is not in compliance with the requirements as accepted by KYMEA.

B. The making and acceptance of final payment will constitute: a waiver of all claims by KYMEA against the Proposer, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Proposer to comply with the Agreement or the terms of any warranty specified herein, (4) arising from the Proposer's continuing obligations under the Agreement, including but not limited to indemnity and warranty obligations, or (5) arising under KYMEA's right to audit; and ii. a waiver of all claims by the Proposer against KYMEA other than those previously asserted in writing and not yet settled.

**16. SPECIAL TOOLS & TEST EQUIPMENT:** If the price stated on the Proposal includes the cost of any special tooling or special test equipment fabricated or required by the Proposer for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of KYMEA and shall be identified by the Proposer as such.

**17. RIGHT TO AUDIT:**

A. KYMEA shall have the right to audit and make copies of the books, records and computations pertaining to the Agreement. The Proposer shall retain such books, records, documents, and other evidence pertaining to the Agreement period and four years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents, and other evidence shall be

available, within ten (10) business days of written request. Further, the Proposer shall also require all Subcontractors, material Proposers, and other payees to retain all books, records, documents, and other evidence pertaining to the Agreement, and to allow KYMEA similar access to those documents. All books and records will be made available within a 50-mile radius of KYMEA's principal office. The cost of the audit will be borne by KYMEA unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Proposer which must be payable within five (5) business days of receipt of an invoice.

B. Failure to comply with the provisions of this section shall be a material breach of the Agreement and shall constitute, in KYMEA's sole discretion, grounds for termination thereof. Each of the terms "books", "records", "documents" and "other evidence", as used above, shall be construed to include drafts and electronic files, even if such drafts or electronic files are subsequently used to generate or prepare a final printed document.

## **18. SUBCONTRACTORS:**

A. The Proposer shall not initially employ any Subcontractor except as provided in the Proposer's Plan. The Proposer shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by KYMEA in writing. No acceptance by KYMEA of any Subcontractor shall constitute a waiver of any rights or remedies of KYMEA with respect to defective deliverables provided by a Subcontractor.

B. Work performed for the Proposer by a Subcontractor shall be pursuant to a written Agreement between the Proposer and Subcontractor. The terms of the subcontract may not conflict with the terms of the Agreement, and shall contain provisions that:

- i. requires that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Agreement;
- ii. prohibit the Subcontractor from further subcontracting any portion of the Agreement without the prior written consent of KYMEA and the Proposer. KYMEA may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to KYMEA;
- iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Proposer in sufficient time to enable the Proposer to include same with its invoice or application for payment to KYMEA in accordance with the terms of the Agreement;
- iv. require that all Subcontractors obtain and maintain, throughout the term of their Agreement, insurance in the type and amounts specified for the Proposer, with KYMEA being a named insured as its interest shall appear; and
- v. require that the Subcontractor indemnify and hold KYMEA harmless to the same extent as the Proposer is required to indemnify KYMEA.

C. The Proposer shall be fully responsible to KYMEA for all acts and omissions of the Subcontractors just as the Proposer is responsible for the Proposer's own acts and omissions. Nothing in the Agreement shall create for the benefit of any such Subcontractor any contractual relationship between KYMEA and any such Subcontractor, nor shall it create any obligation on the part of KYMEA to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

D. The Proposer shall pay each Subcontractor its appropriate share of payments made to the Proposer not later than ten (10) calendar days after receipt of payment from KYMEA.

E. The Proposer shall provide lien waivers from itself and each subcontractor prior to the receipt of payment from KYMEA.

#### **19. WARRANTY - PRICE:**

A. The Proposer warrants the prices quoted in the Proposal are no higher than the Proposer's current prices on orders by others for like deliverables under similar terms of purchase.

B. The Proposer certifies that the prices in the Proposal have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

**20. WARRANTY – TITLE:** The Proposer warrants that it has good and indefeasible title to all deliverables furnished under the Agreement, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Proposer shall indemnify and hold KYMEA harmless from and against all adverse title claims to the deliverables.

**21. WARRANTY – DELIVERABLES:** The Proposer warrants and represents that all deliverables sold KYMEA under the Agreement shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the RFP, to any samples furnished by the Proposer, to the terms, covenants and conditions of the Agreement, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the RFP, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

A. Recycled deliverables shall be clearly identified as such.

B. The Proposer may not limit, exclude, or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.

C. Unless otherwise specified in the Agreement, the warranty period shall be at least one year from the date of acceptance of the deliverables or from the date of acceptance of any replacement deliverables. If during the warranty period, one or more of the above warranties are breached, the Proposer shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at KYMEA's option and at no additional cost to KYMEA. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs shall be borne exclusively by the

Proposer. KYMEA shall endeavor to give the Proposer written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair KYMEA's rights under this section.

D. If the Proposer is unable or unwilling to repair or replace defective or non-conforming deliverables as required by KYMEA, then in addition to any other available remedy, KYMEA may reduce the quantity of deliverables it may be required to purchase under the Agreement from the Proposer and purchase conforming deliverables from other sources. In such event, the Proposer shall pay to KYMEA upon demand the increased cost, if any, incurred by KYMEA to procure such deliverables from another source.

E. If the Proposer is not the manufacturer, and the deliverables are covered by a separate manufacturer's warranty, the Proposer shall transfer and assign such manufacturer's warranty to KYMEA. If for any reason the manufacturer's warranty cannot be fully transferred to KYMEA, the Proposer shall assist and cooperate with KYMEA to the fullest extent to enforce such manufacturer's warranty for the benefit of KYMEA.

**22. WARRANTY – SERVICES:** The Proposer warrants and represents that all services to be provided KYMEA under the Agreement will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Agreement, and all applicable Federal, State, and local laws, rules, or regulations.

A. The Proposer may not limit, exclude, or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

B. Unless otherwise specified in the Agreement, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Proposer shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to KYMEA. All costs incidental to such additional performance shall be borne by the Proposer. KYMEA shall endeavor to give the Proposer written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair KYMEA's rights under this section.

C. If the Proposer is unable or unwilling to perform its services in accordance with the above standard as required by KYMEA, then in addition to any other available remedy, KYMEA may reduce the amount of services it may be required to purchase under the Agreement from the Proposer and purchase conforming services from other sources. In such event, the Proposer shall pay to KYMEA upon demand the increased cost, if any, incurred by KYMEA to procure such services from another source.

**23. ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, KYMEA prefers to accept it, KYMEA may do so. The Proposer shall pay all claims, costs, losses, and damages attributable to KYMEA's

evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, KYMEA may deduct such amounts as are necessary to compensate KYMEA for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to KYMEA by the Proposer.

**24. RIGHT TO ASSURANCE:** Whenever one party to the Agreement in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. If no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.

**25. STOP WORK NOTICE:** KYMEA may issue an immediate Stop Work Notice in the event the Proposer is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by KYMEA to be unsafe to either life or property. Upon notification, the Proposer will cease all work until notified by KYMEA that the violation or unsafe condition has been corrected. The Proposer shall be liable for all costs incurred by KYMEA as a result of the issuance of such Stop Work Notice.

**26. DEFAULT:** The Proposer shall be in default under the Agreement if the Proposer (a) fails to fully, timely and faithfully perform any of its material obligations under the Agreement, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Proposer's Proposal, or in any report or deliverable required to be submitted by the Proposer to KYMEA.

**27. TERMINATION FOR CAUSE:** In the event of a default by the Proposer, KYMEA shall have the right to terminate the Agreement for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Proposer, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to KYMEA's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, KYMEA shall be entitled to recover all actual damages, costs, losses, and expenses, incurred by KYMEA because of the Proposer's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Proposer, KYMEA may remove the Proposer from KYMEA's Proposer list for three (3) years and any Proposal submitted by the Proposer may be disqualified for up to three (3) years. All rights and remedies under the Agreement are cumulative and are not exclusive of any other right or remedy provided by law.

**28. FRAUD:** Fraudulent statements by the Proposer on any Proposal or in any report or deliverable required to be submitted by the Proposer to KYMEA shall be grounds for the termination of the Agreement for cause by KYMEA and may result in legal action.

**29. DELAYS:**

A. KYMEA may delay scheduled delivery or other due dates by written notice to the Proposer if KYMEA deems it is in its best interest. If such delay causes an increase in the cost of the work under the Agreement, KYMEA and the Proposer shall negotiate an equitable adjustment for costs incurred by the Proposer in the Agreement price and execute an amendment to the Agreement. The Proposer must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 49. However, nothing in this provision shall excuse the Proposer from delaying the delivery as notified.

B. Neither party shall be liable for any default or delay in the performance of its obligations under the Agreement if, while and to the extent such default or delay is caused by an event of Force Majeure.

### **30. INDEMNITY:**

#### **A. Definitions:**

"Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for: (1) damage to or loss of the property of any person (including, but not limited to KYMEA, the Proposer, their respective agents, officers, employees and Subcontractors; the officers, agents, and employees of such Subcontractors; and third parties); and/or (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of KYMEA, the Proposer, the Proposer's Subcontractors, and third parties), ii. "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

**B. THE PROPOSER SHALL DEFEND (AT THE OPTION OF KYMEA), INDEMNIFY, AND HOLD KYMEA, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE PROPOSER, OR THE PROPOSER'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE PROPOSER'S OBLIGATIONS UNDER THE AGREEMENT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF KYMEA OR THE PROPOSER (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

#### **31. INSURANCE:** See Appendix A

**32. CLAIMS:** If any claim, demand, suit, or other action is asserted against the Proposer which arises under or concerns the Agreement, or which could have a material adverse effect on the Proposer's ability to perform thereunder, the Proposer shall give written notice thereof to

KYMEA within ten (10) calendar days after receipt of notice by the Proposer. Such notice to KYMEA shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted.

**33. NOTICES:** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Agreement shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, agreed upon electronic notification or other commercially accepted means. Notices to the Proposer shall be sent to the address specified in the Proposer's Proposal, or at such other address as a party may notify the other in writing. Notices to KYMEA shall be addressed to KYMEA as follows:

Kentucky Municipal Energy Agency  
1700 Eastpoint Parkway, Suite 220  
Louisville, Kentucky 40223  
Attention: President and CEO

**34. RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL:** All material submitted by the Proposer to KYMEA shall become property of KYMEA upon receipt. Any portions of such material claimed by the Proposer to be proprietary must be clearly marked as such.

**35. NO WARRANTY BY KYMEA AGAINST INFRINGEMENTS:** The Proposer represents and warrants to KYMEA that: (i) the Proposer shall provide KYMEA good and indefeasible title to the deliverables and (ii) the deliverables supplied by the Proposer in accordance with the specifications in the Agreement will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Proposer does not know of any valid basis for any such claims. The Proposer shall, at its sole expense, defend, indemnify, and hold KYMEA harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that KYMEA's exercise anywhere in the world of the rights associated with KYMEA's ownership, and if applicable, license rights, and its use of the deliverables infringes the intellectual property rights of any third party; or (ii) the Proposer's breach of any of Proposer's representations or warranties stated in the Agreement. In the event of any such claim, KYMEA shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on KYMEA's behalf. Further, Proposer agrees that KYMEA's specifications regarding the deliverables shall in no way diminish Proposer's warranties or obligations under this paragraph and KYMEA makes no warranty that the production, development, or delivery of such deliverables will not impact such warranties of Proposer.



**36. OWNERSHIP AND USE OF DELIVERABLES:** KYMEA shall own all rights, titles, and interests throughout the world in and to the deliverables.

A. Patents. As to any patentable subject matter contained in the deliverables, the Proposer agrees to disclose such patentable subject matter to KYMEA. Further, if requested by KYMEA, the Proposer agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to KYMEA and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by KYMEA, to KYMEA upon request by KYMEA.

B. Copyrights. As to any deliverables containing copyrightable subject matter, the Proposer agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Proposer for KYMEA and KYMEA shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 36 shall negate KYMEA's sole or joint ownership of any such deliverables arising by virtue of KYMEA's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Proposer hereby assigns to KYMEA (and agrees to cause each of its employees providing services to KYMEA hereunder to execute, acknowledge, and deliver an assignment to KYMEA of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Proposer agrees to execute, acknowledge, and deliver and cause each of its employees providing services to KYMEA hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by KYMEA, to KYMEA upon delivery of such deliverables to KYMEA or at such other time as KYMEA may request.

C. Additional Assignments. The Proposer further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which KYMEA might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to KYMEA, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Proposer's obligations to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 36 A, B, and C shall continue after the termination of the Agreement with respect to such deliverables.

**37. PUBLICATIONS:** All published material and written reports submitted under the Agreement must be originally developed material unless otherwise specifically provided in the Agreement. When material not originally developed is included in a report in any form, the source shall be identified.

**38. ADVERTISING:** The Proposer shall not advertise or publish, without KYMEA's prior consent, the fact that KYMEA has entered into the Agreement, except to the extent required by law.

**39. NO CONTINGENT FEES:** The Proposer warrants that no person or selling agency has been employed or retained to solicit or secure the Agreement upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Proposer for the purpose of securing business. For breach or violation of this warranty, KYMEA shall have the right, in addition to any other remedy available, to cancel the Agreement without liability and to deduct from any amounts owed to the Proposer, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

**40. GRATUITIES:** KYMEA may, by written notice to the Proposer, cancel the Agreement without liability if it is determined by KYMEA that gratuities were proposed or given by the Proposer or any agent or representative of the Proposer to any member, director, officer or employee of KYMEA with a view toward securing the 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 Agreement. In the event the Agreement is canceled by KYMEA pursuant to this provision, KYMEA shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Proposer in providing such gratuities.

**41. PROHIBITION AGAINST PERSONAL INTEREST IN AGREEMENTS:** No officer, employee, independent consultant, director or member of KYMEA who is involved in the development, evaluation, or decision-making process of the performance of any RFP shall have a financial interest, direct or indirect, in the Agreement resulting from that RFP. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Proposer shall render the Agreement voidable by KYMEA.

**42. INDEPENDENT PROPOSER:** The Agreement shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Proposer's services shall be those of an independent Proposer. The Proposer agrees and understands that the Agreement does not grant any rights or privileges established for members, directors, officers or employees of KYMEA, for the purposes of income tax, withholding, social security taxes, vacation or sick leave benefits, worker's compensation, or any other KYMEA employee benefit. KYMEA shall not have supervision and control of the Proposer or any employee of the Proposer, and it is expressly understood that Proposer shall perform the services according to the specifications at the general direction of KYMEA, or his designee under the Agreement. The Proposer is expressly free to advertise and perform services for other parties while performing services for KYMEA.

**43. ASSIGNMENT-DELEGATION:** The Agreement shall be binding upon and ensure to the benefit of KYMEA and the Proposer and their respective successors and assigns, provided however, that no right or interest in the Agreement shall be assigned and no obligation shall be delegated by the Proposer without the prior written consent of KYMEA. Any attempted assignment or delegation by the Proposer shall be void unless made in conformity with this paragraph. The Agreement is not intended to confer rights or benefits on any person, firm, or

entity not a party hereto; it being the intention of the parties that there are no third-party beneficiaries to the Agreement.

**44. WAIVER:** No claim or right arising out of a breach of the Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Proposer or KYMEA of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Agreement, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

**45. MODIFICATIONS:** The Agreement can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Proposer invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Agreement.

**46. INTERPRETATION:** The Agreement is intended by the parties as a final, complete, and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Agreement. Although the Agreement may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the Commonwealth of Kentucky, is used in the Agreement, the UCC definition shall control, unless otherwise defined in the Agreement.

**47. DISPUTE RESOLUTION:**

A. If a dispute arises out of or relates to the Agreement, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, nothing identified by this section shall prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties; in which event the parties may proceed directly to mediation as described below.

B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; KYMEA and the Proposer agree to act in good faith in the selection of the mediator and to consider qualified individuals nominated to act as mediator. Nothing in the Agreement prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or

an Agreement interpretation expert. The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. KYMEA and the Proposer will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

**48. JURISDICTION AND VENUE:** The Agreement is made under and shall be governed by the laws of the Commonwealth of Kentucky. All issues arising from the Agreement shall be resolved in the courts of Jefferson County, Kentucky and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of KYMEA to seek and secure injunctive relief from any competent authority as contemplated herein.

**49. INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Agreement shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is the essence of the Agreement be determined to be void.

**50. SURVIVABILITY OF OBLIGATIONS:** All provisions of the Agreement that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Agreement.

**51. EQUAL OPPORTUNITY:**

**A. Equal Employment Opportunity:** No Proposer, or Proposer's agent, shall engage in any discriminatory employment practice. No person shall, on the grounds of race, sex, age, disability, creed, color, genetic testing, or national origin, be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from this RFP.

**B. Americans with Disabilities Act (ADA) Compliance:** No Proposer, or Proposer's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

**52. RIGHT TO INFORMATION:** KYMEA reserves the right to use any and all information presented in any response to this RFP, whether amended or not, except as prohibited by law. Selection of rejection of the Proposal does not affect this right.

**53. LICENSE FEES OR TAXES:** Provided the RFP requires an awarded Proposer or Proposer to be licensed by the Commonwealth of Kentucky, any and all fees and taxes are the responsibility of the Proposer.

**54. COMPLIANCE WITH ALL STATE, FEDERAL, AND LOCAL LAWS:**

The Proposer or Proposer shall comply with all State, Federal, and Local laws and requirements. The Proposer must comply with all applicable laws at all times.

**55. FEDERAL, STATE, AND LOCAL REQUIREMENTS:** Proposer is responsible for both federal and State unemployment insurance coverage and standard Workers' Compensation insurance coverage. Proposer shall ensure compliance with all federal and State tax laws and withholding requirements. KYMEA shall not be liable to Proposer or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Proposer shall indemnify KYMEA and shall pay all costs, penalties, or losses resulting from Proposer's omission or breach of this Section.

**56. DRUG FREE WORKPLACE:** The Proposer shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the Proposer shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

**57. PROPOSER LIABILITY FOR DAMAGE TO KYMEA PROPERTY:** The Proposer shall be liable for all damages to KYMEA-owned, leased, or occupied property and equipment caused by the Proposer and its employees, agents, Subcontractors, and Proposers, including any delivery or cartage company, in connection with any performance pursuant to the Agreement. The Proposer shall notify KYMEA in writing of any such damage within one (1) calendar day.

**58. FORCE MAJEURE:** The term "Force Majeure" shall mean causes beyond the reasonable control of, and not resulting from the fault or negligence (including failure to comply with Prudent Utility Practices) of, the Party claiming Force Majeure, including, but not limited to, acts of God; earthquake; storm; fire; lightning; epidemic; war (declared or undeclared); riot, terrorism, or civil disturbance; or sabotage.

Exclusions from Definition of Force Majeure. Notwithstanding anything in the Agreement to the contrary, "Force Majeure" shall not mean:

(a) Inclement weather affecting construction, start-up, or operation of the Facility or related facilities that does not otherwise meet the definition of "Force Majeure."

(b) Changes in market conditions that affect Buyer or Proposer, as applicable, the cost of Proposer's scope of supply, or the ability of Buyer to obtain the scope of supply at a cost lower than specified in the Agreement.

(c) Unavailability of equipment, repairs, or spare parts for the Facility, except to the extent due to a qualifying event of Force Majeure. Notwithstanding the foregoing, loss of a main power transformer shall constitute an event of Force Majeure if the transformer (i) was purchased new with full manufacturer warranties, (ii) was properly designed for the intended service, including with sufficient redundancy consistent with industry standards and original equipment manufacturer recommendations, (iii) was installed with commercially reasonable protective safeguards (e.g., lightning protection) and (iv) has been maintained pursuant to original equipment manufacturer specifications.

(d) Inability to obtain, maintain or renew any permit or any undue delay in obtaining, maintaining, or renewing any permit, in either case, due to Proposer's failure to diligently pursue obtaining, maintaining, or renewing such permit.

(e) Scheduled maintenance on any distribution or transmission system the availability of which is needed for the delivery of energy from the KYMEA facility;

(f) Litigation or administrative or judicial action pertaining to the Agreement, the KYMEA facility, the facility site, the acquisition, maintenance or renewal of financing or any permits, or the design, construction, maintenance, or operation of the KYMEA facility that are (i) the result of the actions or omissions of either KYMEA or Proposer, or (ii) instituted by KYMEA or the Proposer.

(g) Changes in market conditions that affect the cost of or demand for power.

(h) Change in law.

(i) Any lack of profitability or other financial consideration to a Party.

If a Party is rendered wholly or partly unable to perform its obligations under the Agreement because of Force Majeure, that Party shall be excused from whatever performance it is unable to perform due to the Force Majeure to the extent so affected, provided that:

(i) the Party affected by such Force Majeure, as soon as reasonably practicable after the commencement of such effect, gives the other Party prompt oral notice, followed by a written notice within forty-eight (48) hours after such oral notice, fully describing the particulars of the occurrence;

(ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

(iii) the Party whose performance is affected by such Force Majeure uses its commercially reasonable efforts to overcome and remedy its inability to perform as soon as possible; and

(iv) the event of Force Majeure must not have been caused by or contributed to by any negligent or intentional act, error, or omission of the

affected Party or any of its Affiliates, and must not be caused by or contributed to by any failure to comply with any Applicable Law by the affected Party or any of its Affiliates, or by any breach or default of the Agreement by the affected Party or any of its Affiliates.

**59. NON-WAIVER OF RIGHTS:** Failure of a Party to require performance by another Party under the Agreement will not affect the right of such Party to require performance in the future. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under the Agreement shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. A waiver by a Party of any breach of any term of the Agreement will not be construed as a waiver of any continuing or succeeding breach.

**60. NO WAIVER OF SOVEREIGN IMMUNITY:** The Parties expressly agree that no provision of the Agreement is in any way intended to constitute a waiver by KYMEA of any immunities from suit or from liability that KYMEA may have by operation of law.

**61. RECORDS RETENTION:** The Proposer shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Agreement. The Proposer shall retain all such records for a period of four (4) years after the expiration of the Agreement.

**62. ORDER OF PRECEDENCE:** Should a conflict arise between any of the Agreement documents, it shall be resolved with the following order of precedence (if applicable). In any event, the final negotiated Agreement shall take precedence over any and all Agreement documents to the extent of such conflict.

1. Final negotiated Agreement
2. RFP/Bid documents
3. KYMEA's general and standard terms and conditions
4. Purchase order
5. Proposer terms and conditions

## **APPENDIX A- INSURANCE REQUIREMENTS AND WORKERS' COMPENSATION REQUIREMENTS**

### **STANDARD PROVISIONS:**

**Without limiting any of the other obligations or liabilities of the Proposer, the Proposer shall provide and maintain until work performed under the Agreement has been completed and accepted by KYMEA, Owner, the minimum insurance coverage as indicated hereinafter.**

**As soon as practicable after notification of Agreement award, Proposer shall provide satisfactory certificates of insurance including any applicable addendum or endorsements, containing the Agreement number and title of the project. Proposer may, upon written request to KYMEA, ask for clarification of any insurance requirements at any time; however, Proposers are strongly advised to make such requests prior to proposal/bid opening, since the insurance requirements may not be modified or waived after proposal/bid opening unless a written exception has been submitted with the proposal/bid. Proposer shall not commence any work or deliver any material until he or she receives notification that the Agreement has been accepted, approved, and signed by KYMEA.**

**All insurance policies proposed or obtained in satisfaction of these requirements shall comply with the following general specifications, and shall be maintained in compliance with these general specifications throughout the duration of the Agreement, or longer, if so noted:**

- Each policy shall be issued by a company authorized to do business in the Commonwealth of Kentucky with an A.M. Best Company rating of at least **A or better**.
- Any deductibles or self-insured retentions shall be declared in the proposal. If requested by KYMEA, the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to KYMEA, its officials, agents, employees, and volunteers; or, the Proposer shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- Liability policies shall be endorsed to provide the following:
  - Name as Additional Insured KYMEA, its Officials, Agents, Employees, and volunteers.
  - That such insurance is primary to any other insurance available to the Additional Insured with respect to claims covered under the policy and that this insurance applies separately to each insured against whom claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.
- **Cancellation: KYMEA requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.**
- Should any of the required insurance be provided under a claims made form, Proposer shall maintain such coverage continuously throughout the term of the Agreement and, without lapse, for a period of three years beyond the Agreement expiration, such that occurrences arising during the Agreement term which give rise to claims made after expiration of the Agreement shall be covered.



- Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Proposer shall either double the occurrence limits or obtain Owners and Proposers Protective Liability Insurance.
- Should any required insurance lapse during the Agreement term, requests for payments originating after such lapse shall not be processed until KYMEA receives satisfactory evidence of reinstated coverage as required by the Agreement, effective as of the lapse date. If insurance is not reinstated, KYMEA may, at its sole option, terminate the Agreement effective on the date of the lapse.

**SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:**

**All insurance policies proposed or obtained in satisfaction of the Agreement shall additionally comply with the following specifications, and shall be maintained in compliance with these additional specifications throughout the duration of the Agreement, or longer, if so noted:**

**[X] A. General Liability Insurance:**

General Liability insurance with combined single limits of not less than **\$1,000,000.00** shall be provided and maintained by the Proposer. The policy shall be written on an occurrence basis either in a single policy or in a combination of underlying and umbrella or excess policies.

If the Commercial General Liability form (ISO Form CG 0001 current edition) is used:

- Coverage A shall include premises, operations, products, and completed operations, independent Proposers, Contractual liability covering the Agreement and broad form property damage coverage.
- Coverage B shall include personal injury.
- Coverage C, medical payments, is not required.

If the Comprehensive General Liability form (ISO Form GL 0002 Current Edition and ISO Form GL 0404) is used, it shall include at least:

- Bodily injury and Property Damage Liability for premises, operations, products and completed operations, independent Proposers and property damage resulting from explosion, collapse or underground (XCU) exposures.
- Broad form Contractual liability (preferably by endorsement) covering the Agreement, personal injury liability and broad form property damage liability.

**[X] Automobile Liability Insurance:**

Proposer shall provide Commercial Automobile Liability insurance with Combined Single Limits (CSL) of not less than **\$500,000** either in a single policy or in a combination of basic and umbrella or excess policies. The policy will include bodily injury and property damage liability

arising out of the operation, maintenance and use of all automobiles and mobile equipment used in conjunction with the Agreement.

**Satisfaction of the above requirement shall be in the form of a policy endorsement for:**

- any auto, or
- all owned hired and non-owned autos.

**[X] Workers' Compensation Insurance**

Proposer shall purchase and maintain Workers' Compensation insurance which, in addition to meeting the minimum statutory requirements for issuance of such insurance, has Employer's Liability limits of at least \$100,000 for each accident, \$100,000 per each employee, and a \$500,000 policy limit for occupational disease. KYMEA need not be named as an "Additional Insured" but the insurer shall agree to waive all rights of subrogation against KYMEA, its officials, agents, employees, and volunteers for any work performed for KYMEA by the Named Insured.